shall be substituted, namely :

"SCHEDULE II

The price differential in paise per quintal for the various grades of sugar mentioned below shall, in relation to the basic grade, that is to say the ISS D-29, be as under :

ISS Grade	Paise per quintal	ISS Grade	Paise per quintal	ISS Grade	Paise per quintal
A, B and C-30	(+)200	A, B and C-29	(+)100	A, B and C-28	...
D-30	(+) 85	D-29	...	D-28	(-) 85
E-30	(+) 30	E-29	(-) 50	E-28	(-(135."

[No. 1(9)/64-S. Py.]

K. L. PASRICHA, Jt. Secy

P ' ted by the Director of Printing, Sty. & Publications at the Govt. Press, B'lore.

ELECTION COMMISSION, INDIA.

TALKATORA ROAD, NEW DELHI-1.

Dated 10th March 1965
Phalguna 19, 1886 (Saka).

NOTIFICATION

No. 82/145/62.—In pursuance of section 106 of the Representation of the People Act, 1951, the Election Commission hereby publishes the order pronounced on the 28th December, 1964, by the Election Tribunal, Dharwar.

BEFORE T ELECTION TRIBUNAL, DHARWAR AT DHARWAR.

Present.

SHRI D. PONNURANGAM, B.A., B.L.,

Member, Election Tribunal, Dharwar.

Election Petition No. 3 of 1962.

Dated 28th day of December, 1964.

Patil Krishtagouda Hanamantagouda, aged about 36 years, Agriculturist, residing at Hulkoti, Taluka Gadag, District Dharwar (Mysore State) .. .. *Petitioner.*

Versus.

1. Gadag Kuberappa Parappa, aged about 56 years, Businessman, residing at Gadag, District 'Dharwar (Mysore State).

2. Malgond Veerappa Rudrappa, aged about 38 years, Lawyer, residing at Gadag, Taluka Gadag, District Dharwar (Mysore State).

3. Kampali Shankarappa Yenkappa, aged about 40 years, Businessman, residing at Gadag, Taluka Gadag, District Dharwar (Mysore State).

4. Jalihal Ramachandra Anant Rao, aged about 40 years, Medical Practitioner, residing at Gadag, Taluka Gadag, District Dharwar (Mysore State) .. *Respondents.*

Shriyuts B. S. Patil and B. L. Patil, Advocates, for the Petitioner.

Shriyuts N. K. Dixit, A. K. Naganur and S. N. Inamadar, Advocates for the Respondent No. 1.

Shri C. B. Patil, Advocate, for the Respondent No. 3.

Respondent Nos. 2 and 4 absent.

ORDER

1. "If we value democracy we must value our vote. If we value our vote, we must exercise the right to vote in all seriousness and with a sense of duty. If we must vote rightly, we must do it, after full deliberation. If our vote is to signify our real opinion, the elections must be free and fair."

2. In our democratic set up, it is very essential that public ethics must be observed and public policy must be adhered to. Therefore, the Law of Election will not tolerate any flegrant breach of such ethics and public policies. Purity of elections must be maintained at all costs and any attempt to procure success by unfair and foul means should be ruthlessly suppressed. Crooked and illegal methods employed by a candidate, his workers or agents, must be suitably dealt with and sternly put down with iron hands by enforcing the Law of Election. But at the same time, the allegations must be proved beyond doubt ; an election should not rightly be interfered with, the underlying policy being that the wishes of the voters must be respected and their wishes should not lightly be brushed aside.

3. The Law of Election, as applicable to our country, is a peculiar one the procedure of which is a total departure from the Common Law. The statutory requirements of Election Law must be strictly observed and an election contest is not action at law or a suit in equity, but it is purely statutory proceeding unknown to the Common Law and the Tribunal possess no Common Law power.

4. To borrow the political expression, the procedure to be followed under the Election Law is " non-alligned " to both the Civil and Criminal Laws ; and yet it co-exists with both the Civil and Criminal Laws. The procedure to be followed in trials of election petitions is Civil in form, but in substance, it is a Criminal trial, especially when one keeps in mind the results and consequences that follow from the decisions of election petitions. It is Civil because, an election petition is to be tried in accordance with the procedure applicable to suits and it is Criminal because, the standard of proof especially for proving corrupt practices is that as required in Criminal Cases. In the words of the Supreme Court of India " Charges of corrupt practices are quasi-criminal in character". An election petition is to be tried in accordance with the procedure applicable to Civil Suits, but the standard of proof for proving corrupt practices is as required in Criminal Cases. But at the same time, it must be remembered that a successful candidate in an election petition is not in the position of an accused, and he is not necessarily to be placed on a level with the accused in a criminal trial in all respects. An Election Tribunal is required to purge elections of all kinds of corrupt practices and impurities and to use the words of Their Lordships Chagala, Chief Justice as he then was, " Section 123 of the Representation of the People Act must be strictly construed in favour of the person against whom the charges preferred. The case of corrupt practices must be strictly proved. If there is any reasonable doubt, the benefit of that doubt must be given to the person against whom the charges preferred....."

5. This is an election petition filed by the Petitioner, Sri Patil Krishtagouda Hanamantagouda of Hulakoti, Taluka Gadag, Dharwar District, under Section 80 of the Representation of the People Act (which will hereinafter be called the R. P. Act or the Act) for a declaration that

the election of the returned candidate is void and for a further declaration that he himself has been duly elected to the Mysore Legislative Assembly from the Gadag Constituency. He has also claimed the costs of the election petition.

6. The facts of the case, in brief, are as hereunder:—

7. The Petitioner abovenamed was an independent candidate un-attached to any political party and the Respondent No. 1, Sri Gadag Kuberappa Parappa, was the official candidate of the Congress Political Party with the Respondent No. 2 Sri Malgond Veerappa Rudrappa, as a dummy candidate for the Repsondent No 1. The Respondent No. 3, Sri Kampli Shankarappa Yenkappa, was also another independent candidate and the Respondent No. 4, Sri Jalihal Ramachandra Ananta Rao, was an official candidate of the Jana Sangh.

8. The Petitioner and the four Respondents had filed their nominations as candidates for election to the Mysore Legislative Assembly from the Gadag constituency. The Respondents 2 and 3 withdrew their candidature with the result the actual contest was among the Petitioner, Respondent No. 1 and the Respondent No. 4.

9. That the notification calling the election was effective as from 13th January 1962. The polling was held on 22nd February 1962 and the result was declared on 27th February 1962. The Respondent No. 1 had secured 18,539 votes as against 17,234 votes secured by the Petitioner and 1,918 votes secured by the Respondent No. 4. The number of invalid votes was 2,265 and the number of tendered votes was 16 and 11 votes were missing. The Respondent No. 1 was declared elected on 27th February 1962. It is against that declaration, the present election petition has been filed by the Petitioner. The election petition is in time and the required deposit prescribed by Election Law has been deposited.

10. The Petitioner calls in question the election of the Respondent No. 1 to the Mysore Legislative Assembly on the grounds of corrupt practices of bribery, undue influence, of appealing on the ground of religion, race, cast, community, language of appealing to national symbol or national emblem, of resorting to promoting feelings of enmity or hatred between different classes of citizens on the ground of religion, race, cast etc., of publishing false statements reasonably collected to prejudice the prospects of the election of the Petitioner, of incurring or authorising expenditure in contravention of Section 77 of the R. P. Act, of procuring assistance from persons in the service of Government and that the votes have been miscounted, mis-bundled in non-compliance with the election rules.

11. The particulars of corrupt practices mentioned in paras 4(*a*), (*b*), (*bb*), (*c*), (*cc*), (*d*), (*e*), (*f*) and (*g*) have been respectively shown in the paras 5 (*a*), (b), (*bb*), (c), (*cc*), (*d*), (*e*), (*f*) and (*g*) of the election petition

12. The election petition is dated 9th April 1962 and the same was received by the Secretary, Election Commission, India on 11th April 1962 by registered post. The Election Commission had admitted the election petition, served a copy of the petition on the Respondents and had got the election petition published in the State Gazette. The Principal District and Sessions Judge, Dharwar was initially appointed by the Commission, as a Single Member Tribunal to try this election petition and later in 1964, I (the First Additional District and Sessions Judge, Dharwar), have been appointed as a Single Member Tribunal to try this election petition.

13 The Petitioner is represented by Shriyuts B. S. Patil and B. L. Patil, Advocates ; the Respondent No. 1 is represented by Shriyuts N. K. Dixit, A. K. Naganur and S. N. Inamadar, Advocates ; the Respondent No. 3 is represented by Shri C. B. Patil, Advocate and the Respondent Nos. 2 and 4 were absent and *ex parte*. The Respondent No. 1 has filed his written statement at Ex. 36 and the Respondent No. 3 has filed his written statement at Ex. 38. On the basis of the pleadings, the Tribunal has framed 13 issues as per Ex. 107 as follows :—

(1) Does the Petitioner prove the corrupt practices of bribery under Section 123(1) of the R. P. Act as alleged in paragraphs 4(*a*), 5(*a*)(i), (ii), (iii), (iii-a), (iv), (v), (vi), (vii), (viii), (ix) and (x) of the petition ?

(2) Does the Petitioner prove the corrupt practices of undue influence as alleged in paragraphs 4(*b*) and 5(*b*) (i), (ii), (iii), (iv) and (v) and 5(*bb*) (i) and (ii) ?

(3) Does the Petitioner prove the corrupt practices of appealing to voters on the ground of religion etc., under Section 123(3) and Section 123(3A) of the R. P. Act, 1951, as alleged in paragraphs 4(c) and (4)(cc) and 5 (c) (i), (ii) and 5(cc) of the petition ?

(4) Does the Petitioner prove the corrupt practices of false statement, etc., under Section 123(4) of the R. P. Act as alleged in paragraphs 4(*d*) and 5(*d*) (i), (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix) and (x) of the petition ?

(5) Does the Petitioner prove the corrupt practices under 123(5) of the R. P. Act as alleged in paragraphs 4 (*e*) and 5(*e*) (i), (ii), (iii), (iv) of the petition ?

(6) Does the Petitioner prove the corrupt practice under Section 123(6) of the R. P. Act as alleged in paragraphs 4(*f*) and 5(*f*) (i) of the petition ?

(7) Does the Petitioner prove the corrupt practice under Section 123(7) as alleged in paragraphs 4(*g*) and 5(*g*) of the petition ?

(8) Does the Petitioner prove that there has been miscounting of votes as alleged in paragraphs 4(*h*) of the petition and that the result of the election is thereby materially affected ?

(9) Does the Petitioner prove that tongas, bullocks, bullock carts, etc., were hired by Respondent No. 1 and taken out in procession and that the expenses were incurred by him as alleged in paragraphs 5(*x*) and 5(*xi*) of the petition and that they offend the provisions of the R. P. Act ?

(10) If it is proved by the Petitioner that Respondent No. 1 has been guilty by an agent, other than his election agent, of any corrupt practices mentioned in the above issues, does Respondent No. 1 prove :

(*a*) that no such corrupt practices were committed at the election by him or his election agent and every such corrupt practice was committed contrary to his orders and without his consent or of his election agent,

(*b*) that Respondent No. 1 and his election agent took all reasonable means for preventing the commission of corrupt practices at the election, and

(*c*) that in all other respects the election was free from any corrupt practice on the part of Respondent No. 1 or any of his agents ?

(11) Is the election of Respondent No. 1 void?

(12) Is the Petitioner entitled to be declared that he himself has been duly elected ?

(13) What order ?

14. The Petitioner has examined 82 witnesses including himself and closed his case and the Respondent No. 1 has examined in all 35 witnesses including himself and closed his case. The other Respondents have not examined any witnesses. I have heard the arguments on behalf of the Petitioner and on behalf of the Respondent No. 1 at great length and also perused the records of this case. The other Respondents and their counsels were absent at the time of arguments of this election petition.

15. I will now proceed to consider the issues framed in this case and evidence recorded in this case keeping in mind the various principles laid down and observations made in various decisions regarding the Law of Election as applicable to our country.

16. *Issue No.* 1 :—

> **" Does the Petitioner prove the corrupt practices of bribery under Section 123 (1) of the R. P. Act as alleged in paragraphs 4 (a), 5 (a) (i), (ii), (iii), (iiia), (iv), (v), (vi), (vii), (viii), (ix) and (x) of the petition?"**

Under Section 123 (1) of the R. P. Act, the definition of bribery embodies the following ingredients :—

(1) There must be a gift, offer or promise.

(2) The gift, offer or promise, must be by (*a*) a candidate or (*b*) his agent or (*c*) any other person with the consent of the candidate or his election agent.

(3) The gift, offer or promise, may be of any gratification.

(4) The gift, offer or promise may be to any person whatsoever.

(5) The gift, offer or promise, must be made with the object of inducing a person to stand or not to stand as, or to withdraw from being a candidate, or an elector to vote or refrain from voting ; or as a reward for having done so.

(6) Receipt or agreement to receive, gratification by any person whatsoever is also bribery.

(7) Gratification includes all forms of entertainment and forms of employment for reward.

(8) Payment of expenses *bona fide* incurred and shown in the election accounts is not bribery.

17. When donation is given in charity, it will become bribery if corrupt motive exists. Charitable gift may in reality be nothing more than a subtle form of bribery. In fact, the gift may be nothing more than a cloak to conceal the corrupt practice. Charity at the election time ought to be kept by the politicians in the background. It will generally be found that the feeling which distributes relief to the poor at the election time, though those who are the distributors may not be aware of it, is really not charity, but partly feeling following the steps of charity, bearing the dress of charity and mimiking her gait (Waigan : 4 O'M and H. 13). The corrupt practice of bribery must be proved by clear and unequivocal evidence. Suspicion however, strong, will not be enough. The evidence, whether direct or circumstantial, should have no doubt in the mind of the tribunal (8 E.L.R. 139).

18. Treating is also bribery. Treating may be defined as the corrupt giving of meat, drink or entertainment to persons in order to influence their votes. It may also be defind as "getting at the voters through their mouths and through their stomachs" (Bodmin : 5 O'M and H 231). In order to prove that the offence of treating has been committed, the time at which and the circumstance in which people were fed must be considered (Wigan : 4 O'M and H 13). The test of treating is the intention to produce an effect on the election, or an intention to gain popularity during the election.

19. There are eleven instances of corrupt practice of bribery in the allegations mentioned in the Issue No. 1, I will now proceed to consider each allegation of bribery separately.

20. *The allegation contained in para* 5 (*a*) (*i*) *of the petition* :

The allegation in para 5 (*a*) (i) of the petition is that on 25th January 1962, the Respondent No. 1 fed at least some 200 to 250 voters of Asundi under the pretext of ' Ashtagraha-Shanti ' and spent some Rs. 200 therefor through his canvassing agent, Sri Basappa Veerappa Gadag of Asundi. The meals were served infront of Maruti Temple at Asundi with the definite purpose of inducing the electors to vote for him, which promise was obtained from them by the said Basappa Veerappa Gadag after the Respondent No. 1 appealed for votes while the meals were being served.

21. The Respondent No. 1 has stated in para 13 of his written statement (Ex. 36) that the allegations contained in para 5(a) (i) of the petition are all false and that the treating alleged therein is denied. The allegation that this Respondent fed some voters of Asundi under the pretext of ' Ashtagraha Shanti ' is not true ; that it is false to allege that he has spent Rs. 200 as alleged ; that Sri Basappa of Asundi was not a canvassing agent of this Respondent. On the other hand, he is a friend of the Petitioner and his name appears to have been introduced with an ulterior motive.

22. This allegation is spoken to by the Petitioner, P. W. 5, P. W. 6, P. W. 9, P. W. 11, P. W. 62 and by the Respondent No. 1 and R. W. 4.

23. The Petitioner has given evidence that Basappa Veerappa Gadag of Asundi was canvassing on behalf of the Respondent No. 1 and that on 25th January 1962, the said Basappa Gadag had fed Asundi people in connection with the ' Astagraha Shanti ' by giving dinner, that is, meals were given there to 200 or 300 persons at Maruti Temple and about Rs. 200 would be the expenses incurred in connection with the same. That the Respondent No. 1 had given Basappa Veerappa Gadag a sum of Rs. 200 for the purpose of serving meals. That when the meals were going on, the Respondent No. 1 appealed with folded hands (did namaskar) and said that he was a Congress Candidate and they should all vote for him. That Basappa Gadagin said when they were taking meals that they should promise to give votes to the Respondent No. 1 and all the people said with food in their hands that they would vote for the Respondent No. 1. The Petitioner has also given evidence that this information was given to him by Fakkiraddi and Somaraddi ; and that Somaraddi was a witness at the time of the meals and that this ' Ashtagraha Shanti ' was reported in Ex. 157, the issue of Deshavani daily paper dated 1st February 1962 under the heading " Sivanama Japa in Asundi."

24. The Petitioner has also given evidence that it does not appear that the Respondent No. 1 had appointed any election agents and that Basappa Veerappa Gadag was canvassing votes for the Respondent No. 1, arranging meetings at Asundi and that the informant Fakkiraddi Pujar who is his (Petitioner's) polling agent and Somaraddi told him about

serving meals about four or six days after the election and that he might have filed his election petition about two or two and a half months after the election and it is reported in Ex. 157 Deshavani that the Village Panchayat Chairman, Sri Venkaraddi Huchchanavar had given the report and that it is reported in Ex. 157 that the function came to an end with the serving of food. The Petitioner has also given evidence that at the time of information about the said meals, Basappa Gadag and Fakkiraddi Pujar did not tell him about the Respondent No. 1 having stood the meal and that he did not complain to any one about the information, nor did he publish it in papers.

25. P. W. 5 Basappa Veerappa Gadag of Asundi has given evidence that he had helped the Respondent No. 1 during the last General Election and that he was the Chairman of the Committee formed for the purpose of " Ashtagraha Shanti " in Asundi which was performed on behalf of the Bhajana Sangh and Venkanna Huchchanavar was the Secretary of that Sangh. That the " Ashtagraha Shanti " was performed from 19th January 1962 to 25th January 1962 and originally, it was planned that contribution should be raised from the village and meals should be served on the final day, that is, on 25th January 1962. But the Respondent No. 1 had come to Asundi two days before the final day and asked them to support him for which, the Respondent No. 1 was informed that the Petitioner had a strong hold and it was difficult to help him and Fakkiraddi, Venkaraddi and P. W. 5 and others promised to help him as much as they could. The Respondent No. 1 had told them that the villagers of Asundi should be told to help him and that whatever expenses incurred for the 'Sapthaha' would be paid by the Respondent. That Govindappa Pujari said that Rs. 200 would be the expenses for that purpose which the Respondent agreed to pay on 23rd January 1962 and accordingly, P. W. 5 went to the house of Respondent No. 1 on 23rd January 1962, got a sum of Rs. 200 from the Respondent No. 1, stayed on the night of 23rd January 1962 in the house of the Respondent No. 1, did the marketing on 24th January 1962 alone, returned to Asundi on the same day and prepared the food on 25th January 1962.

26. P. W. 5 has also given evidence that on 25th January 1962, the Respondent No. 1 and P. W. 11 Budappa Ramappa Tirlapur came to Asundi at the time meals were being served ; and about 200 to 300 persons were in the Hanuman Temple. The Respondent No. 1 said to the people taking meals, with folded hands that as far as possible he might be helped. Venkanna said that they would help him only and thereafter, P. W. 5 asked the persons taking meals that the Respondent No. 1 was asking them and they (people taking meals) should give a promise with food in hand as they were taking the Respondent's food and help the Respondent only for which those persons said that as they were taking his food, they will help the Respondent No. 1 only and no one else. P. W. 5 has given further evidence that he had maintained the accounts in the exercise book Ex. 577 the entries of which are in his hand that in all a sum of

Rs. 197-4-0 were spent by him and returned the balance of Rs. 2-12-0 to the Respondent No. 1 within two or three days and that Venkanna, P. W. 5, Fakkiraddi, Hemaraddi and Govindappa Pujar were working on behalf of the Respondent No. 1 in Asundi during the election and that they were canvassing for the Respondent No. 1 and that about 300 to 400 votes were won over to the side of the Respondent No. 1 from that of the Petitioner as a result of the 'Ashtagraha Shanti'

27. P. W. 6 Somaraddi Venkaraddi Inamati of Asundi has given evidence about taking meals and the oath of the people taking meals on 25th January 1962 and he corroborates the evidence of P. W. 5 on that point. He has also deposed that two or three days after the election, he had gone to Gadag for marketing to the shop of one Shiggavi and the Petitioner was there at that time to whom P. W. 6 told him about the oath taken by the voters during the 'Ashtagraha Shanti'

28. P. W. 9 Fakkiraddi Mudaraddi Pujar of Asundi has given evidence that on the last day of the 'Ashtagraha Shanti' at Asundi, the Respondent No. 1 and P. W. 11 came in a car to Hanuman Temple and he corroborates the evidence of P. W. 5 and P. W. 6 on other points regarding the alleged oath taken during the meals. He has also given evidence that he had informed the Petitioner about this matter about five or six days after the election.

29. P. W. 11 Budappa Ramappa Tirlapur of Binkadakatti has given evidence that on the final day of the 'Ashtagraha Shanti' at Asundi, the Respondent No. 1 picked him up in his car and together they went to the Hanuman Temple at Asundi and he also corroborates the evidence of P. W. 5 regarding the other points of meals and oath, etc., and he also states that Somaraddi was sitting for meals.

30. P. W. 62 Vasantaraddi Mareddappa Huchchanavar of Asundi also corroborated the evidence of P. W. 5 on this point.

31. The Respondent No. 1 has given evidence that he had not gone to Asundi village between the 17th and the 25th of January 1962 and that it is false he gave meals to Asundi people on 25th January 1962. He has also given evidence that he did not take any part in the celebration of the 'Ashtagraha Shanti' as alleged and that P. W. 5 Basappa Gadagin of Asundi was not his canvassing agent and that P. W. 5 had supported the Petitioner in the last election and that the account book Ex. 577 produced by P. W. 5 is false and fabricated and what P. W. 9 Somaraddi Inamati has stated above his having given meals at Asundi, and made an appeal is also false and similarly, what Vasantaraddi mappa Budappa, Tirlapur Fakkiraddi and P. W. 5 have stated about the same is false, because they are the followers of the petitioner and that there was no talk with Venkaraddi Huchchanavar about 'Ashtagraha Shanti'.

32. R. . 4 Venkaraddi Hanumaraddi Huchchanavar of Asundi is the Chairman of the Village Panchayat Committee at Asundi and a Member of the Congress. He has given evidence that there is a Bhajan Mandal in Asundi consisting of 14 or 15 members and there is no separate committee for it and that P. W. 5 Basappa Gadagin has nothing to do with Bhajan Mandal of that village and that the Bhajan Mandal is going on his (R.W. 4's)responsibility and R.W. 4 also attends the Bhajan Mandal. He has deposed that some persons in the village supported the Petitioner and some in that village supported the Respondent No. 1 during the election and that P. W. 5, P. W. 6, P. W. 9 are some of the prominent persons who had supported the Petitioner during the election and that he (R. W. 4) was one of those who had supported the Respondent No. 1.

33. R. W. 4 has also given evidence that he had given the announcement about the 'Ashtagraha Shanti' appearing in Ex. 157, the Deshavani daily paper and that he was the prominent person taking leading part in that 'Ashtagraha Shanti' and that there had been no separate committee formed about 'Ashtagraha Shanti' and that P. W. 5 had taken no part in that function and also about the arrangement of food. He has given evidence that P. W. 5 has no status in society and that he (P.W. 5) had been convicted in a prohibition case and thatthe evidence of P. W. 5 that he (P. W. 5) was the Chairman of that 'Ashtagraha Shanti' function and that R. W. 4 was the Secretary is absolutely false. He has given further evidence that on 25 th January 1962, the serving of food in the Maruti Temple was going on from 9 A.M. to 12 NOON and that he (R. W. 4) was in that temple from 7 A.M. till the last moment, as all the responsibility was on him and that the Respondent No. 1 had not come to Asundi during the days of 'Ashtgraha Shanti' and the Respondent No. 1 had also not come on the day on which food was served, and that all the people had come for meals on that day including men, women and children and it is false that only voters were invited for food and it is also false that the Respondent No. 1 had incurred the expenses for the meals and that he told the persons assembled there to vote for him and that P. W. 5 made the people to swear with food in their hands that they would vote for the Respondent No. 1. He has also given evidence that P. W. 11 Budappa Ramappa Tirlapur had not at all come to Asundi at the time of 'Ashtagraha Shanti' or at the time of serving of food. That it was R. W. 4 who had originated the idea of celebrating the 'Ashtagraha Shanti' in the village of Asundi.

34. It has been contended on behalf of the Petitioner that P. W. 5 Basappa Gadagin cannot at all be said to be a witness of untruth and that what all P. W. 5 has stated before this Tribunal is the truth, the whole truth and nothing but truth and that P. W. 5 is poor in worldly possessions, but he is rich in spiritual aspiration as he is a devotee of Lord Siva (being a Lingayat) and a man who had taken an important part in the celebration

of 'Ashtagraha Shanti' in that village, not for himself, but for the peace, prosperity and good-will for all and what P. W. 5 had done during the 'Ashtagraha Shanti' was charity for all and malice towards none and that P. W. 5 is a man of perfect honesty and a thorough gentleman in the true sense of the term so much so he himself personally went to the Respondent No. 1 at Gadag from Asundi and refunded the balance of Rs. 2–12–0 and that P. W. 5 had maintained a true and correct account on the expenses so incurred in the account book Ex. 577. He has further urged that P. W. 5 is convicted for being drunk and drinking at the most is only a technical matter and it is not an anti-social matter, as drinking harms not others but the drinker himself. He has further urged that P. W. 5 being a Congressman, naturally supported the Respondent No. 1 who is admittedly a Congress candidate and that as the Reddys were very strong at Asundi village in favour of the Petitioner, the Respondent No. 1 being a past master, a veteran seasoned congressman with enough and more experience of election, knowing the psychology of the voters, did not want to lose the opportunity of 'Ashtagraha Shanti' and the Respondent No. 1 wanted to take advantage of that Shanti particularly in the Asundi village where the voters were in favour of the Petitioner and therefore the Respondent No. 1 made the trap and succeed in the trapping of the people of Asundi by offering to incur the expenses for the 'Ashtagraha Shanti' and thereby trapped the voters of Ashundi by trapping them in the name of God and of Ashtagraha Shanti and thereby trapped the Gods themselves with his matured political experience.

35. The names of P W. 6 Somaraddi and P. W. 9 Fakkiraddi have not been mentioned int he election petition. The name of P. W. 9 has been introduced in the examination in chief of the Petitioner and that of P. W. 6 in his cross-examination. The Petitioner has also given evidence that he knows about some witnesses for what he had called them for and about some, he does not know for what they had been called for and that they are all about election.

36. The Petitioner has no personal knowledge of the above allegation in view of his verification in his election petition. It is required that whatever facts a witness may speak to, he should be confined to those lying within his own knowledge, whether they be things said or done, and should not testify from information given by others, however worthy of credit they may be. For it is deemed in dispensable to the proper administration of justice first that every witness should give his testimony under the sanction of an oath or its equilvalent, a solemn affirmation and secondly that he should be subject to the ordeal of a cross-examination by the party against whom he is called, so that it may appear, if necessary, what were his powers of perception, his opportunities for observation, his attentiveness in observation, the strength of his recollection and his disposition to speak the truth. But the testimony from the relation of third persons,even where the information known,

cannot be subject to these tests, because as Mr. Justice Bulter observes, "if the first speech were without oath, another oath that there was such speach makes it no more than a mere speaking and so of no value in a Court of Justice," besides, it is often impossible to ascertain through whom, or how many persons, the narrative has been transmitted, from the original witness of the fact. It is this which constitutes that sort of second hand witness, termed hearsay, a species of proof of which, with a few exceptions, cannot be received in judicial investigations. Further, the Petitioner is a highly interested witness being interested in himself.

37. P. W. 5 Basappa Gadagin, according to the Petitioner, was the canvassing agent of the Respondent No. 1, but P. W. 9 who is admittedly the polling agent of the Petitioner, has given evidence that 15 days before the election, there was a meeting of the Petitioner held near Asundi village where persons from Asundi spoke in that meeting and one of the speakers in that meeting of the Petitioner was P. W. 5 Basappa Gadagin who spoke in that meeting and P. W. 5 was one of those speakers who said that the Petitioner had helped them and therefore, the voters should vote for the Petitioner, and the evidence of P. W. 9 shows that P. W. 5 was not at all working and canvasing for the Respondent No. 1 as pretended to by P. W. 5 in his evidence, but P. W. 5 was working for and canvassing on behalf of the Petitioner during his election. Further, P. W. 5 says that he was the Chairman for the celeberation of Astagrahashanti in Asundi, but he does not remember who spent on the 19th, 20th 21st, 22nd, 23rd and 24th of January 1962 in connection with the celeberatioin of Astagrahashanti. P. W. 5 has given evidence that Krishnappa Huchchanavar, Hanamappa Ramanahalli, Pakkiraddi Pujar, Ramappa Timmappa Boomakkanavar, some of whom were the polling agents of the Petitioner were present when the Respondent No. 1 told him regarding the footing of the expenses for the last day of the Astagrahashanti and about the people taking oath, but P. W. 5 on the very next stage says that the above persons were not there when the Respondent No. 1 said so. P. W. 5 has admitted in his evidence that there are two parties in Asundi, one supporting the Petitioner and the other supporting the Respondent No. 1 during the election and he pretends he does not know Fakkiraddi Pujar and others were moving about in the village canvassing for the Petitioner and that he came to depose on behalf of the Respondent No. 1 when he was in fact cited, summoned and examined by the Petitioner. The fact that P. W. 5 was the Chairman of the celeberation of Astagrahashanti is negatived by the evidence of R. W. 4 Venkaraddi Huchchanavar who is admittedly the Chairman of the Village Panchayat Committee of Asundi and who has deposed that it was R. W. 4 who was entirely and solely responsible for the celeberation of the Astagrahashanti at Asundi and R. W. 4 is the person who had given a report to the newspaper which is published in Ex. 157 Deshavani and R. W. 4 swears that P. W. 5 had nothing to do either with the Bajan Mandal or with the celeberation of the Astagrahashanti in Asundi.

38. P. W. 62 Vasantaraddeppa of Asundi has given evidence that the meeting to elect the Chairman and Secretary regarding Astagrahashanti was in Hanuman Temple on 19th January 1962 and the proceedings had been written in a white paper and given to P.W. 5. If P.W. 5 was really elected as the Chairman as deposed to by him, the white paper spoken to by P. W. 62 must have been with P. W. 5 who should have produced it or spoken to about it in his evidence and that has not been done in this case. The evidence of both P. W. 62 and P. W. 5 on this point is falsified by the evidence of the Respondent No. 1 and R. W. 4, both of whose evidence on this point appears to be natural, probable and true. P.W. 5 who is alleged to have been the Chairman of that Committee has not kept any account of the expenses incurred from 19th January 1962 to 24th January 1962, nor has he kept any record as to who were the persons who had performed the Shanti Pooja from the 19th to the 24th of January 1962. But he has produced the account book Ex. 577 which contains entries of 25th January 1962 only. This account book Ex. 577, has not been mentioned in the election petition nor referred to by the election petitioner in his evidence. It has not even been referred to by any of the witnesses examined on behalf of the Petitioner except P. W. 5. Even R. W. 4 Vasantareddi who according to the evidence of P. W. 5 was the elected Secretary of that Committee, does not refer to this account book Ex. 577 in his evidence. P. W. 5 has stated that he had not met the Petitioner till the day P. W. 5 was examined by the Tribunal on 29th January 1963 and that he had not told anyone about the 'Astagrahashanti' or of his having received Rs. 200 from the Respondent No. 1 and that he had not told anyone about the possession of the account book Ex. 577 before its production before this Tribunal and that, that account book had been kept by him in his house as he wanted to keep the account of the amount spent.

39. In Ex. 111 which is the list of Petitioner's witnesses, Sl. No. 189 is P. W. 5 Basappa Gadagin and he was not asked to produce any document by the Petitioner. Even his witness Summons, as per the evidence of this witness, P. W. 5 has not asked to bring any document in that summons. P. W. 5 has also given evidence that he had been told by the Advocate for the Petitioner to bring the account book and so he brought the account book before this Tribunal and that account book is Ex. 577. If this witness had not told anyone about the possession of the account book Ex. 577 to anyone, how could it be possible for the Petitioner's side to produce the account book which the Petitioner himself had not referred to either in his election petition in his evidence. Therefore, the production of that account book Ex. 577 itself throws lot of doubt regarding its genuineness. Hence, I cannot accept that account book Ex. 577.

40. Now, let us assume for a moment that the account book Ex. 577 is a book kept during the regular course of the celeberation of Astagrahashanti, let me also for the purpose of discussion accept that P. W. 5

was the Chairman of that Committee. According to the evidence of P. W. 5 the Respondent No. 1 had not asked him to maintain the accounts nor any members had asked him to maintain any account. True to the dictates of his conscience, if really P. W. 5 had maintained the account of all the amount spent by him on this behalf, then the normal course of nature would be to have shown or given that account book to the Respondent No. 1 when P. W. 5 had allegedly gone to the Respondent No. 1 to refund the balance.— and should have satisfied the Respondent No. 1 to the correctness of the entries made in that book and taken it back from the Respondent No. 1 or kept it with the Respondent No. 1 or at least it should have been shown to R. W. 4 Venkaraddi who was admittedly the Secretary of the Committee and it was R. W. 4 who had given a report of the celebration of the Astagrahashanti in the Dhesavani Ex. 157 which has not been disputed or challenged by P. W. 5, and P. W. 5 should have at least told R. W. 4 that he had maintained that account with respect to the expenses incurred on the last day. Even that has not been done. The conduct of P. W. 5 in producing the account book at a belated stage without even being asked to be produced in the Summons keeping in mind that P. W. 5 was canvassing for the Petitioner and spoke in the meeting of the Petitioner during the election (refer evidence of P. W. 9), ventilates flood of light on the *mala fides* of P. W. 5 and shows how enthusiastic this witness has been in fabricating a story of the kind spoken to by him. From his evidence and from the evidence of P. W. 6, P. W. 9, P. W. 62, R. W. 1 and R. W. 4, this witness appears to be a seasoned lier capable of making dramatic performance by which he would try to make it appear a lie to be true. I am not at all convinced with the evidence of this witness, as, apart from being highly interested appears to miserably untrue and beautifully fabricated and engineered for the purpose of this case. For the reasons stated above, I reject the evidence of this witness P. W 5 as wholly unreliable, untrustworthy and dangerous to be acted upon.

41. P.W. 6 Somaraddi Inamati was admittedly not presnt at the time of the election of P.W. 5 as the Chairman of the Committee as he was not at all attending daily during the celebration of Astagrahahanti. The presence of P.W. 6 is not spoken to either by P.W. 5 or the Petitioner. His presence during the time of meals is also not spoken to by P.W. 5. P.W. 6 Somaraddi admittedly was not present when the alleged sum of Rs. 200 was given to P.W. 5 by the Respondent No. 1 nor when Respondent No. 1 offered to pay that sum. P.W. 6 was not attending the Hanuman Temple during that period and he had not even contributed anything for the Astagrahashanti. P.W. 5 has given evidence that there are two parties in that village, one supporting the Petitioner and the other supporting the Respondent No. 1 during the election. P.W. 6 denies even that admitted fact in his evidence. P.W. 5 has deposed that Venkaraddi (R.W. 4) is opposed to the Petitioner, but P.W. 6 has given evidence that the relation between Venkaraddi and the Petitioner are good, and that he (P.W 6) had not come as a witness for anyone, though he was told that

the Petitioner had asked him to come as a witness, and that he is neither on the side of the Petitioner nor on the side of the Respondent No. 1. P.W. 6 pretends to be nutral in his evidence, but his evidence shows that he is a supporter of the Petitioner. I am not satisfied or convinced with the evidence of this witness on this point.

42. P.W. 9 Fakkiraddi Mudakaraddi Pujar is admittedly a polling agent of the Petitioner during the last election and he is interested in the Petitioner. The evidence of P.W. 9 that there are no two parties in his village is falsified by the evidence of P.W. 5. Admittedly, P.W. 9 had not taken part in the Astagrahashanti and admittedly, P.W. 9 was not even been invited for meals on that day, but he says that he was sitting there casually on the katta just to see. He admits that the Petitioner had come to Asundi during the election two or three times to canvass votes and P.W. 9 was a polling agent of the Petitioner and also canvassing for the Petitioner and yet he had not informed the Petitioner what he had seen with his own eyes and what the Respondent No. 1 did on the Astagrahashanti, day. If the story of taking the oath during the meals was true, this witness being interested in the Petitioner as the canvassing and polling agent, could have been the first to inform the Petitioner about this incident. His keeping silence during the election is a circumstance and that too a strong circumstance to falsify his story of the oath at the time of the meals. His evidence that he had not informed the Petitioner about this matter, even though the Petitioner met him in that village during the election indicates that the story of oath at the meals is absolutely false. The evidence of P.W. 9 shows that P.W. 5 was not at all working and canvassing for the Respondent No. 1. P.W. 9 has also given evidence that it was at Gadag that he (P.W. 9) met the Petitioner for the first time five or six days after the election appears to be a total falsehood in view of the evidence given by this witness. I am not impressed or convinced with the evidence of this witness on this point and I therefore cannot believe his story.

43. P. W. 11 Budappa Ramappa Tirlapur is a henchman of the Petitioner who in turn is a good friend of P. W. 56 Martandappa Mulimani and Neelappa Karur and P. W. 11 has given evidence that he acts as per the wishes of Neelappa Karur. The evidence of P. W. 11 is an interested testimony and I cannot rely upon the evidence of this witness. I will deal with the evidence of this witness in detail in connection with the other allegation in this case where I could set out my reason why P. W. 11 is not only an unreliable witness, but he is an accomplice within the meaning of Section 133 of the Indian Evidence Act. I am not convinced with the evidence of P. W. 11 on this point as his evidence is highly interested. I, therefore, reject the evidence of P. W. 11 on this point.

44. P. W. 62 is another interested witness. His presence in the meeting of the committee is not spoken to by P. W. 5 himself who is

alleged to be the Chairman elected in the meeting. The evidence of P. W. 62 shows that the name of P. W. 5 as Chairman was proposed by none other than Venkaraddi Boomakkanavar who was admittedly the polling agent of the Petitioner. P. W. 62 appears to be a partisan and a chance witness. I am not convinced with the evidence of this witness. Thus, it is seen that all the witness examined by the Petitioner on this point, are all shown to be, one way or the other, directly or indirectly, interested in the Petitioner. Their evidence, apart from being interested, is also discrepant, unreliable and cannot be acted upon. Therefore, I hold, for the reasons stated above that the Petitioner has failed to prove the allegation of Asundi affairs mentioned in para 5 (a) (i) of the petition.

The next allegation is at para 5 (a) (*ii*).

45. The allegations in para 5 (a) (ii) of the petition is that on 2nd February 1962, a meeting of the Muslims of Gadag-Betgeri was convened by Sri K. M. Noorani, the canvassing agent of the Respondent No. 1, in order to engineer muslim support on communal lines for the Respondent No. 1 and some five hundred Muslim voters attended the meeting where they were treated and served with tea and refreshment and the bill was footed by the Respondent No. 1. The treating was so resorted to and voters were thus got promised in favour of the Respondent No. 1. The meeting was held at the adda of Haji Tajuddin Saheb Umachagi of Gadag.

46 The Respondent No 1, in para 14 of the witten statement Ex 36, has stated that the allegations contained in para 5(a (ii) are false and denied in toto and that K. M. Noorani is not a canvassing agent of this Respondent at all and that it appears that a meeting of Muslims was held at Gadag, but this Respondent had nothing. to do with the meeting, directly or indirectly and that he is not aware of any treating at the meeting. It is false to say that the bill was footed by this Respondent

47. 'The above allegation is spoken to by the Petitioner, P. W. 15, P. W. 16, P. W. 17, P W. 35,P. W. 64 and by the Respondent No. 1, R. W. 28, R. W. 29 and R. W. 35, and the relevant document is Ex. 201 the handbill

48 The Petitioner has given evidence that on 2nd February 1962, K. M. Noorani who was canvassing daily for the Repondent No. 1 in the whole constituency, and held the meeting of all the Muslims in Sri Haji S. R. Umachagi 's adda where 500 to 550 Muslims attended the meeting in which, Sri Umachagi, a rich man having done much work to the Muslim Community, had presided over the meeting That Noorani spoke that all the Muslims should vote for the Respondent No 1 and that P. W. 15 Husensab Annigeri, P. W. 16 Buddansab Nargund and P. W. 17 Ummer

sab Attar said that they should not ask on the basis of religion and that they should be left free to vote and they (Sri Noorani and others) said that they had decided to vote for the Respondent No. 1 and they all belong to the Muslim Community and would vote for the Respondent No 1. That they did not listen to P. W. 15, P. W. 16 and P. W. 17 and asked them that they should do what they like and thereafter, all of them assembled and were given refreshment. The Petitioner has also given evidence that the Pamphlet Ex 201 was pubiished in this behalf with the symbols of the Muslim and also the Muslim numeral 756 to bring pressure on the Muslims·

49. P. W. 15 Husansab Annigeri a Compounder in the Ayurvedic Dispensary at Gadag-Betgeri Municipality has given evidence that he attended the meeting of 2nd February 1962 which was attended by 500 to 550 persons and that at the end of the meeting, there was a tea party and the bill which came to Rs. 250 was footed by the Respondent No. 1.

50. P. W. 16 Budansab Nargund and P. W. 17 Ummarsab Attar have given evidence corroborating the evidence of P. W. 15 and that there was a tea party after the meeting and the bill of the tea party was footed by the Respondent No. 1 P. W. 35 Hanamantachar Hombali and P.W. 64 Jayaramachar Malagi have corroborated the evidence of P. W. 15.

51 The Respondent No. 1 has given evidence that he had not attended the meeting held in the adda of Sri Haji Tajuddin Saheb Umachagi on 2nd February 1962 and neither Umachagi nor Noorani were his canvassing agents. He has also given evidence that they are the leaders of the Muslim Community in Gadag and they supported the Congress and had supported him and supported Smt. Sarojini Mahishi They supported the Congress from the point of view that they would help the amelioration of their Community.

52. R. W. 28 Husensab Sirahatti a resident of Gadag has given evidence that he had attended the meeting on 2nd February 1962 which was convened only for the Muslim Community and that tea was served after that meeting and it is false to say that the Respondent No. 1 had paid the charges for the tea party.

53. R. W. 29 Noorani has given evidence that the Respondent No. 1 was not present in that meeting and that after the meeting they had tea and that Sri Haji Tajuddin Sab Umachagi had made arrangements for the tea in his adda and that the Respondent No. 1 had nothing to do with the adda meeting and it is false to say that the Respondent No. 1 was present at the meeting and paid for the tea. The evidence of R. W. 29 Noorani is also corroborated by the evidence of R. W. 35 Haji Tajuddin Sab Umachagi.

54. According to the allegations in para 5 (a) (ii) of the petition it is alleegd that R. W. 29 Noorani and R. W. 35 Haji Tajuldin Sab, Umachagi had arranged for the meeting of 2nd February 1932 of the Muslims of Gadag-Betgeri and R. W. 29 had acted as the canvassing agent of the Respondent No. 1. Excepting the allegation that the Respondent No. 1 had footed the bill for the tea served in that meeting, the name of the Respondent No. 1 is not otherwise mentioned. It is not mentioned that the meeting was held at the instance and with the consent of the Respondent No. 1. No consent or specific overt act is at all mentioned against the Respondent No. 1 excepting the allegations in para 5 (a) (ii) of the petition. In the petition, it is not alleged that the meeting was held for the Respondent No. 1 and Smt. Sarojini Mahishi, the other Congress candidate for the Parliament.

55. P. W. 15 Husensab Annigeri is interested in the Petitioner because the dispensary where he is working as a Senior Compounder belongs to the Municipality of which P. W. 34 Kanavi is the President representing the Civic Board Party of which the Petitioner is the Chairman for many years and the President of the Municipality is elected by the Civic Board Party which was in the majority. Thus, P. W. 15 is the servant of the Municipality and naturally, he is supporting the Petitioner. P. W. 15 also states that except the Respondent No. 1 no other non-muslim was present at the meeting, but the Petition states that it was a meeting of the Muslims. The statement of P. W. 15 about the presence of the Respondent No. 1 is falsified by the evidence of R. W. 29 and R. W. 35.

56. P. W. 16 Budansab Nargund speaks about the presence of P. W. 35 Hombali and P. W. 64 Malagi which was not spoken to by either the Petitioner or P. W. 15. All the announcements and the reports in the newspapers regarding the meeting, namely the news papers Ex. 158, Ex. 179, Ex. 159, Ex. 180, etc., show that it was a meeting of the Muslims. There is no publication to show that the Respondent No. 1 was present in that meeting. The introduction of P. W. 35, P. W. 64, by P. W. 16 is therefore an after thought and an improvement in the story of the Petitioner. Further, this witness P. W. 16 is admittedly a peon in the Gadag-Betgeri Municipality of which P. W. 34 Kanavi is admittedly its President and who (P. W. 34) had supported the Petitioner and therefore, P. W. 16, being a servant of the Municipality, is an interested witness.

57. P. W. 35 Hanamantachar Hombali is a Proprietory-Correspondent of the Navanagarika daily paper and admittedly, P. W. 35 was supporting the Petitioner in the election and therefore interested in the Petitioner. His evidence is tainted. P. W. 35 himself admits that it was R. W. 29 Noorani who intimated about the publication of the report of the meeting of 2nd February 1962 thereby negativing his presence in that meeting. Further, P. W. 35 Hombali is interested in the Petitioner because he is deriving a pecuniar benefit from the Petitioner and P. W. 35

appears to have been made to speak on many points and so P. W. 35 appears to be the mount piece of the Petitioner and hence highly interested in the Petitioner.

58. P. W. 64 Jayaramachar Malagi is a Correspondent of the Samyukta Karnatak Daily in Gadag and he has given evidence that ke knows P. W. 35 Hombali, but P. W. 35 and he are not friends. But P. W. 35 in his evidence has deposed that he is a friend of P. W. 64 Jayaramachar Malagi. The materials on record show that P. W. 64 is a friend of P. W. 35 who is admittedly a fellow correspondent supporting the candidature and the cause of the Petitioner during the last election. P.W. 64.who speaks about the details of the meeting is a Hindu. According to the other witness, the meeting of 2–2–1962 was held at about 10 or 10–30 A.M. The dispensary of this witness P. W. 64 was working, during the election, from 8 A.M. to 12–30 P.M. and in the evening from 4 P.M. to 7 P.M. So, P.W. 64 could not have attended the meeting at 10 or 10–30 A.M. when his dispensary was working from 8 A.M. to 12-30 P. M. P. W. 64's financial status does not appear to be bright. Apart, from being highly interested in the Petitioner, it appears from his evidence that he is under the influence of P. W. 35 Hombali. The presence of P. W. 35 and P. W. 64 are falsified by the evidence P. W. 15, R. W. 28, R. W. 29 and R.W. 35.

59. The Petitioner has no personal knowledge regarding this allegation and the evidence of the Petitioner on this point is a second hand evidence. Reading the evidence of the Petitioner and his witnesses will show that the offering of the tea by the Respondent No. 1 is false and P. W. 35 Hombali and P. W. 64 Malagi were not at all present in that meeting. The way in which their evidence is given shows how false evidence is rampant in this case. Further, the contents of the petition and the development and improvement of the case from time to time shows that the evidence of the Petitioner and his witnesses are unreliable. The Respondent No. 1 had nothing to do with any other matter in that meeting, tea or the bill.

60. For the reasons stated above, I hereby hold that the Petitioner has failed to prove the allegation contained in para 5 (a) (ii) of the petition and that the evidence adduced by the petitioner in this behalf is not at all reliable and satisfactory.

The next allegation is at para 5 (a) (*iii*) *of the petition*

61. The allegation contained in the above para is that on 17–2–1962 a harmonium costing about Rs. 350 was gifted to the Ameture Dramatic Company at Neelgund and the price of the harmonium was paid by the Respondent No. 1 as reward for votes of artists of the said Ameture Dramatic Company, the members of their family, their other relations, friends, dependents etc.

54. According to the allegations in para 5 (a) (ii) of the petition it is alleegd that R. W. 29 Noorani and R. W. 35 Haji Tajuldin Sab, Umachagi had arranged for the meeting of 2nd February 1962 of the Muslims of Gadag-Betgeri and R. W. 29 had acted as the canvassing agent of the Respondent No. 1. Excepting the allegation that the Respondent No. 1 had footed the bill for the tea served in that meeting, the name of the Respondent No. 1 is not otherwise mentioned. It is not mentioned that the meeting was held at the instance and with the consent of the Respondent No. 1. No consent or specific overt act is at all mentioned against the Respondent No. 1 excepting the allegations in para 5 (a) (ii) of the petition. In the petition, it is not alleged that the meeting was held for the Respondent No. 1 and Smt. Sarojini Mahishi, the other Congress candidate for the Parliament.

55. P. W. 15 Husensab Annigeri is interested in the Petitioner because the dispensary where he is working as a Senior Compounder belongs to the Municipality of which P. W. 34 Kanavi is the President representing the Civic Board Party of which the Petitioner is the Chairman for many years and the President of the Municipality is elected by the Civic Board Party which was in the majority. Thus, P. W. 15 is the servant of the Municipality and naturally, he is supporting the Petitioner. P. W. 15 also states that except the Respondent No. 1 no other non-muslim was present at the meeting, but the Petition states that it was a meeting of the Muslims. The statement of P. W. 15 about the presence of the Respondent No. 1 is falsified by the evidence of R. W. 29 and R. W. 35.

56. P. W. 16 Budansab Nargund speaks about the presence of P. W. 35 Hombali and P. W. 64 Malagi which was not spoken to by either the Petitioner or P. W. 15. All the announcements and the reports in the newspapers regarding the meeting, namely the news papers Ex. 158, Ex. 179, Ex. 159, Ex. 180, etc., show that it was a meeting of the Muslims. There is no publication to show that the Respondent No. 1 was present in that meeting. The introduction of P. W. 35, P. W. 64, by P. W. 16 is therefore an after thought and an improvement in the story of the Petitioner. Further, this witness P. W. 16 is admittedly a peon in the Gadag-Betgeri Municipality of which P. W. 34 Kanavi is admittedly its President and who (P. W. 34) had supported the Petitioner and therefore, P. W. 16, being a servant of the Municipality, is an interested witness.

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59. The Petitioner has no personal knowledge regarding this allegation and the evidence of the Petitioner on this point is a second hand evidence. Reading the evidence of the Petitioner and his witnesses will show that the offering of the tea by the Respondent No. 1 is false and P. W. 35 Hombali and P. W. 64 Malagi were not at all present in that meeting. The way in which their evidence is given shows how false evidence is rampant in this case. Further, the contents of the petition and the development and improvement of the case from time to time shows that the evidence of the Petitioner and his witnesses are unreliable. The Respondent No. 1 had nothing to do with any other matter in that meeting, tea or the bill.

60. For the reasons stated above, I hereby hold that the Petitioner has failed to prove the allegation contained in para 5 (a) (ii) of the petition and that the evidence adduced by the petitioner in this behalf is not at all reliable and satisfactory.

The next allegation is at para 5 (a) (*iii*) *of the petition*

61. The allegation contained in the above para is that on 17-2-1962 a harmonium costing about Rs. 350 was gifted to the Ameture Dramatic Company at Neelgund and the price of the harmonium was paid by the Respondent No. 1 as reward for votes of artists of the said Ameture Dramatic Company, the members of their family, their other relations, friends, dependents etc.

62. The Respondent No. 1 has stated in para 15 of his written statement Ex. 36 that the allegations in para 5(a) (iii) are all false and denied and this Respondent is not aware of the gift of a harmonium to the ameture Dramatic Company at Neelgund. It is false to allege that the price of the harmonium was paid by this Respondent as a reward for the voters.

63. The above allegation is spoken to by the Petitioners, P. W. 14 and P. W. 31 and also by the Respondent No. 1.

64. The Petitioner has given envidence that on 17th February 1962, the Neelgund Ameture Dramatic Company took a harmonium which the Respondent No. 1 had procured for them for Rs. 350 with the intention that the persons of the dramatic company and Neelgund villagers who were under their influence should vote for him and that Ningappa Annigeri of Bentur had told him about the said gift. That one Basappa Hiretammannavar of Neelgund was taking the harmonium to Neelgund from Annigeri through Bentur village and that all the Ameture Dramatic Company people and other persons of Neelgund were canvassing in the village to vote for the Respondent No. 1. The Petitioner has also given evidence that the informant Ningappa Annigeri belongs to the group supporting the Respondent No. 1 and that Ningappa Annigeri told him at Bentur village a bout six or seven days after the election and that the Petitioner had not personally seen Basappa Hiretammannavar taking the harmonium. That Ningappa Annigeri told him about his taking the harmonium, as Ningappa said he had seen it at Bentur. That the Respondent No. 1 had got the harmonium from Bombay to Annigeri Station and that Ningappa took it from that Station. He has also given evidence that he did not make enquiries as to from whom it was purchased at Bombay and that he made enquiries and he even asked for the receipt from one Adargunchi of the Dramatic Company, but he did not give the receipt and that the petitioner has not yet attempted to obtain a duplicate railway receipt with respect to the harmonium.

50. P. W. 14 Ningappa Govindappa Annigeri of Bentur village has given evidence that he is a Congress man for the last 5 or 6 years and that about 4 or 5 days before the polling day, he went to the tea shop of one Hanumappa Bavikatti to take tea where he met one Basappa Hiretammannavar, a cart-man and on P. W. 14 questioning him, he said tha the (Basappa Hiretammennavar) had brought the harmonium from Annigeri and that the Respondent No. 1 had procured the harmonium for the Neelgund Dramatic Company and that the Respondent had paid Rs. 350 for it. P. W. 14 has also given evidence that Basappa Hiretammannavar told him that the trend in the village was first towards the Petitioner, but after the harmonium was procured, it appeared that 50 per cent of the notes would go over to the Respondent No. 1. P. W. 14 has given further evidence that he P. W. 14 had told the Petitioner about 5 or 6 days after the election that the harmonium had been procured for the Dramatic Company and that the Petitioner had secured less votes at Neelgund on that account.

51. P. W. 31 Hiretammannavar of Neelgund has given evidence that about 10 or 15 days before the election, the Respondent No. 1 had come to Neelgund and asked one Yellappa as to how the election was in Neelgund for which Yellappa replied that the trend was more in favour of the Petitioner and that the Respondent No. 1 said that he should be helped and Yellappa told the Respondent No. 1 that, that locality was the locality of the poor people and a piano might be given to the drama boys and the Respondent No. 1 had agreed to it and that the piano would cost about Rs. 300 to Rs. 350 . That the boys said that the piano would be procured before the election for which also the Respondent No. 1 agreed. P. W. 31 has also given evidence that when it was 4 or 5 days before the election, the Respondent No. 1 had sent word to Yellappa that the piano had been kept in the house of Bellolli in Annigeri and that he (Yellappa) might go and collect it. That message was sent through one Katti Mahadevappa and that P. W. 31 asked him to send a boy with him and P. W. 31 would not get alone. P.W. 31 has given further evidence that he left for Annigeri in cart, brought the piano from the house of B llolli Gurapadappa, came through Bentur and while so coming, they (meaning he and the boy) took tea in a tea shop where P.W. 14 Ningappa Annigeri met him and that on P.W. 14 enquiring him as to where he had gone, P.W. 31 told P.W. 14 about the piano box and having gone to Annigeri to bring it and the the Respondent No. 1 having procured it.

52. The Respondent No. 1 has given evidence that he had not procured any harmonium to the Neelgund Dramatic Company and that P.W. 14 Ningappa Annigeri and P.W. 31 have deposed falsely in this connection, becauses they may be the friends or the followers of the Petitioner (para 23 of his evidence). The Respondent No. 1 has also given evidence that he does not know about the existence of an Ameture Dramitic Company at Neelgund. (Para 160 of his evidence).

53. It has been contended by the learned Advocate for the Petitioner that the existence of the Dramatic Company at Neelgund is not seriously challenged or disputed by the Respondent No. 1 and the Respondent No. 1 being a seasoned and veteran congress man and being a post master in the election and having enough and more experience of elections and knowing trend of the people in that village is favour of the Petitioner, through his net at Neelgund by bribing and treating the voters of that village through the hands and through their ears instead of getting at their votes through their mouths and through their stomachs and thereby succeeding in traping the Dramatic Company boys and this is another evidence of the fact that the Respondent Appeal has not chosen to examine any rebuttal evidence by examining other independent witnesses, except examining himself and that the evidence of the Respondent No. 1 is highly interested and therefore should not be acceptable.

54. Strict proof of the allegation is required to hold a person guilty of a corrupt practice. (11 E.L.R. 415) Evidence creating on suspiciou

is not enough to prove a corrupt practice. (11 E.L.R. 332). The Petitioner must prove his case and in case of a doubt, the benefit goes to the Respondent as it goes to an accused in a criminal case (12 E.L.R. 1). It is for the Petitioner to prove a corrupt practice. It may be advisable and sometimes necessary for the Respondent against whom a corrupt practice is alleged, to adduce evidence in rebuttal or to examine himself. However, failure to examine himself can be taken into consideration is weighing the evidence only. It cannot, as in a civil case be implied there from that the charge of bribery has been established against the Respondent (17 E.L.R. 321).

55. On a perusal of the allegations in para 5 (*a*) (iii) of the petition, the phrase used in the petition is : " a harmonium costing about Rs. 350 was gifted to the Ameture Dramatic Company at Neelgund." The normal meaning would be that the harmonium was gifted at Neelgund. If the name : " Neelgund " were to go with the Ameture Dramatic Company, then the place where the gift was given is not mentioned in the petition. It is not alleged in the petition that the price of the harmonium was paid by the Respondent No. 1, the date of the payment and the place where the amount was paid are also not mentioned in the petition. No names of the individuals have been stated in the petition.

56. P.W. 14 Ningappa Annigeri says in his evidence that he is a congeress man ; he does not clearly say in unmistakable terms that he had worked for the Respondent No. 1. He indirectly states that he had worked for the Respondent No. 1 during the election. But, from his alleged conversation with the Petitioner after the election shows that P.W. 14 was not working for the Respondent No. 1, but he was working for the Petitioner. This witness pretends to be the supporter of the Respondent No. 1 during the election, but on a close perusal of his evidence will clearly show that P.W. 14 is either the Petitioner's henchman or his supporter. If P.W. 14 was the supporter of the Respondent No. 1, and if the alleged gift of harmonium was really true, then P.W. 14, in the normal course of human nature, could not have disclosed that information to the Petitioner, and if P.W. 14 was working for the Respondent No. 1 during the election, the Petitioner, being the leader of the opposite camp, could not have asked P.W. 14 why P.W. 14 had done things against him in that election. The alleged conversation with the Petitioner by P.W. 14 appears to be against the human conduct during the usual and normal course of nature.—P.W. 14, apart from being the supporter of the Petitioner admits that he is a member of Agricultural Co-operative Society and he appears also to be a henchman of the Petitioner. I am not impressed with the evidence of P.W. 14 which has got a touch of artificiality and sesemblence of exaggeration in his evidence. I am unable to believe the evidence of P.W 14 on this point as true. According to P.W. 14 what he saw on that day near the tea shop was a harmonium.

57. According to the evidence of P.W. 31 Hiretammannavar, what was gifted was not a harmonium, but it was a piano. The name of Yellappa has been introduced through the evidence of P.W. 31. Chanabasappa Adarguncbi is the polling agent of the Petitioner, as could be seen from the polling papers. In the petition, no names of any of the persons have been mentioned. If the Petitioner had known the names of his witnesses about 5 or 6 days after the election, he must have mentioned their names in the election petition. The Petitioner states in his evidence that he had informed about the names to his advocate which appears to be false. The Petitioner, has already mentioned above, does not mention the names of P.W. 14 and P.W. 31, but introduces their names in his evidence and P.W. 14 and P.W.31 in their turn have introduced so many other names of the persons, the names of none of whom have been either cited or examined by the Petitioner, According to the evidence, it is only Yellappa who had talked with the Respondent No. 1 about the gift, and it was that Yellappa who had sent P.W. 31 to get the harmonium from Annigeri and to whom P.W.31 had handed over the harmonium. That Yellappa has not been examined by the Petitioner and no reason at all is forthcoming for his non-examination. So also the boy Kallappa who is said to have accompanied P.W. 31 for getting the harmonium is not examined. P.W. 14 and P.W. 31 are admittedly friends of each other, and the fact that each of these two witnesses as a friend of the other is admitted by both of them. Their evidence discloses, if closely scrutinised, that these two witnesses were supporting the Petitioner and not the Respondent No. 1 during the election. There has been constant and continuous change in the story of the Petitioner at each and every stage from the election petition to the Petitioner's evidence and from the Petitioner's evidence to the evidence of his witnesses.

58. The Petitioner has no personal knowledge as per his verification to the election petition. According to the Petitioner, the harmonium was got from Bombay to Annigeri, and the Petitioner asked for the receipt from Adarguncbi the polling agent of the Petitioner, but Adarguncbi has not given him the receipt.The Petitioner admits that though the Railway receipt was not available, the railway record was available and the same has not been produced. Knowing the difficulty of the railway receipt, P.W. 14 is made to say that he got the harmonium from Annigeri and not from Annigeri Railway Station, and P.W. 14 does not know from where the harmonium was brought. P.W. 14 denies having informed that fact to the Petitioner that the harmonium was got from Bombay P.W. 14 being the sole informant according to the Petitioner, the name of P.W. 14 has also not been mentioned in the election petition.

59. P.W. 31 is made to say that he got the piano (not harmonium) from the house of one Ballolli Gurupadappa. Ballolli Gurupadappa has not been examined. Whether the Dramatic Company had supported the Petitioner or the Respondent No. 1 is to be noticed from the fact that the person Adarguncbi who is from the Dramatic Company was the polling

agent of the Petitioner and not of the Respondent No. 1 and that Adarganchi was a polling agent of the Petitioner can be seen from Ex. 266, the list of polling agents (Polling Station No. 54 Neelgund). The allegation in para 5 (*a*) (iii) is not only not proved, but the evidence of the Petitioner and his witnesses on this point are absolutely false. I cannot accept the evidence of the Petitioner and his witnesses on this point.

60. For the reasons stated above, I hold that the Petitioner has failed to establish the above allegation. in para 5 (*a*) (iii).

The next allegation under the Issue No. 1 is at para 5(a) (iii-a) of the petition.

61. The allegation in para 5(*a*) (iii-a) is that on 21st February 1962, Vasudev Ramappa Hadli of Chikkahandigol, a polling and canvassing agent of the Respondent No. 1, distributed the amount of Rs, 1,000 to two hundred voters at Chikkahandigol and Hirehandigol at the rate of Rs. 5 each.

62. The Respondent No. 1 has stated in para 16 of his written statement Ex. 36 that the allegations in para 5(*a*) (iii-a) of the petition are false ; that Sri. Vasudev Ramappa Hadli mentioned therein was not a canvassing agent of this Respondent, he was, however, posing as a supporter of this Respondent and that this Respondent does not remember whether under that impression he had appointed him as polling agent. That it is learnt that he is the friend of the Petitioner and actually worked against this Respondent in the election. It is denied that the Respondent No. 1 distributed money to any voters and that this Respondent is emphatic that he never asked him to distribute any money or at any time consented to any such distribution.

63. The above allegation is spoken to by the Petitioner, P. W. 3, P. W. 4, P. W. 49, P. W. 50, P. W. 51, P. 52, P. W. 53, P. W. 54, P. W. 55 and the Respondent No. 1 and R. W. 32, and the relevant document is a letter said to have been written by Vasudev Hadli and it is produced with Ex. 377.

64. The Petitioner has given evidence that Vasudev Ramappa Hadli of Annigeri had moved about in all the villages canvassing for the Respondent No. 1 and he had purchased votes at the rate of Rs. 5 for the Respondent No. 1 at Chikkahandigol and that the Petitioner had learnt that about 100 votes were purchased in that way, and one Ganganagouda Guranagouda had told him about it and he had also heard similarly that Virupaxagouda Basanagouda had purchased about 100 votes for the Respondent No. 1 at Hirehandigol at Rs. 5 per vote and that the Respondent No. 1 had paid this money in the hands of Vasudev Ramappa Hadli who had paid it in the hands of Bimanagouda and that money was sent to Virupoxa gouda at Hirehandigol and that Vasudev

Ramappa Hadli had spent the money at Chikkahandigol and the balance was to Hirehandigol (refer para 4 of his evidence). He has also given evidence that in Ex 111, the list of his witnesses, the name of Vasudev Ramappa Hadli does not appear and that Vasudev Ramappa Hadli is not connected with the Respondent No. 1 in any other way except as a canvassing agent. That Ganganagouda Giranagouda Goudar told him about what Vasudev Ramappa Hadli had said in respect of purchasing votes, about 6 or 7 days after the election and that he (the Petitioner), was not told where the money was paid. He has also given evidence that Ganganagouda and also Bimangouda told him about the money having been sent to Hirehandigol for purchasing votes with Bimanagouda and that the said Bimanagouda told the Petitioner on the very day that Virupaxagouda had distributed money in Hirehandigol. The Petitioner has deposed further that he did propoganda in Chikkahandigol and Hirehandigol once in three or four days during the election.

65. P. W. 3 Virupaxagouda Basanagouda Patil of Hirehandigol has given evidence that he is a member of the Congress, he has always supported the Congress and he was supporting the Respondent No. 1 and canvassing for him at Hirehandigol during the last election. That the inclination of the voters at Hirehandigol was initially towards the Petitioner and that about two or three days before the polling day, the Respondent No. 1, Vasudev Ramappa Hadli and some others had come together to his village and Vasudev Ramappa Hadli said that some attempt should be made and some voters should be won over. He has also given evidence that the Respondent No. 1 and Vasudev Ramappa Hadli said that whatever the money that was to be spent, the work was to be done and the voters should be won over. P. W. 3 has also deposed that he has produced the letter dated 21st February 1962 with Ex. 377 from Vasudev Ramappa Hadli and that Vasudev Ramappa Hadli and P. W. 3 were classmates in Chikkahandigol and P. W. 3 knows, recognises and identifies the handwriting of Vasudev Ramappa Hadli and that the handwriting in the aforesaid letter is that of Vasudev Ramappa Hadli and that letter and a sum of Rs. 500 were given to him by Bimanagouda Yellappagouda Patil on the night prior to the polling day. That P. W. 3 read that letter and he distributed the money among the voters at the rate of Rs. 5 per vote in his village and in that manner he had won over about 100 to 150 votes. He had distributed a sum of Rs. 475 in this manner and on the second day after the election, he had returned the balance of a sum of Rs. 25 to the Respondent No. 1 saying that Rs. 475 had been distributed among the voters and the balance of Rs. 25 was remaining with him. He has also deposed that Vasudev Ramappa Hadli is also known as Vasudev Rangappa Hadli.

66. P. W. 3 has given further evidence that he had been summoned to produce the letters received from the Respondent No. 1 and others

and the letter produced by him is the only letter he had brought and that he has no other letters with him relating to the election. That he had not told the Petitioner about having received this letter, nor did he tell him about having paid bribes to voters and P. W. 3 does not know the Petitioner and he (P. W. 3) had not told anybody about his having received the letter and having given the bribe till the production of that letter before this Tribunal and till his evidence before this Tribunal, and that Bimanagouda is also classmate and that the above letter was brought in a packet.

67. P. W. 4 Bimanagouda Yellappagouda Patil of Chikkahandigol has given evidence that he is the polling agent of the Respondent No. 1 during the last election and that the letter produced with Ex. 377 and a sum of Rs. 500 were given to him by Vasudev Ramappa Hadli at Chikkahandigol ; he went to Hirehandigol and gave that letter and the money to P. W. 3 Virupaxagouda at Hirehandigol and he (P. W. 4) told P. W. 3 that he (P. W. 3) should pay Rs. 4 or Rs. 5 per vote or pay Rs. 20 or so for a big family with four or five votes and in that way he should secure at least 100 votes for the Respondent No. 1, and that he gave the money on the evening prior to the day on which the polling was to take place.

68. P. W. 4 has also given evidence that Vasudev Ramappa Hadli gave the above letter and the money to him two days prior to the polling day and he went with the money to Hirehandigol, a day prior to the polling day and that P.W. 4 had also distributed Rs. 500 at Chikkahandigol at the rate of Rs. 5 per vote telling the voters to vote for the Respondent No. 1 and thereby he had won over two hundred votes in this manner. He has further deposed that he had folded the letter and kept it in his pocket and not in any cover.

69. Two witnesses from Chikkahandigol have been examined for having received bribery. They are P.W. 49 and P.W. 50.

70. P.W. 49 Sivappa Fakkirappa Kurabageri of Chikkahandigol has given evidence that there are five votes in his house including his and on a day prior to the polling, Vasappa Ramappa Hadli and P.W. 4 Bimanagouda came to his house, after nightfall, paid Rs. 25 to him at the rate of Rs. 5 per vote telling him to vote for the Respondent No. 1 and that he after the receipt of the money had made up his mind to vote for the Respondent No. 1, though initially he wanted to vote for the Petitioner. P.W. 50 Hanumappa Kurabageri is another witness from Chikkahandigol who has given evidence regarding the alleged bribe and he says that P.W. 4 and Vasudev Ramappa Hadli came to his house, he (P.W. 50) said that he wanted to vote for the Respondent No. 1 if money was paid to him and accordingly, they paid him Rs. 30 for six vo after nightfall prior to the polling day.

71. Four witnesses have been examined from Hirehandigol for having received bribes and they are P.W. 51, P.W. 52, P.W. 54 and P.W. 55.

72. P.W. 51 Irappa Fakkirappa Navalgund of Hirehandigol has given evidence that on the polling day after the nightfall, P.W. 3 Virupaxagouda came to his house and he paid Rs. 35 to him for seven votes in his house at the rate of Rs. 5 per vote. P.W. 52 Barmappa Maribasappa Hugar has given evidence that P.W. 3 paid him Rs. 10 for two votes on the day prior to the election. P.W. 54 Rudrappa Mahadevappa Gobbarmpi has given evidence that he was paid Rs. 25 by P.W. 3 at the rate of Rs. 5 per vote and that he had five votes. P.W. 55 Shankarappa Channappa Tadasi has given evidence that he was paid Rs. 30 for six votes by P.W. 3 at the rate of Rs. 5 per vote.

73. P.W. 53 Ganganagouda Iranagouda Goudar of Chikkahandigol given evidence that on the day prior to the election, Vasappa Ramappa Hadli who was advertising for the election of the Respondent No. 1 had sent for him at about 6 P.M. he went there where P.W. 4 and others were resent and Vasappa Ramappa Hadli said that the Respondent No. 1 ad given a sum of Rs. 1,000 and that Rs. 500 was to be distributed at Chikkahandigol and a sum of Rs. 500 was to be distributed at Hirehandigol and that Vasudev Ramappa Hadli wrote a letter and said that the amount and the letter be handed over to Virupaxagouda to whom it was addressed and he (Virupaxagouda) was told to give Rs. 5 per each vote and P.W. 4 put the amount and the letter in his pocket. He has also given evidence that P.W. 4 and Vasappa Hadli had said that the amount should be distributed at Chikkahandigol and they went there and that this witness (P.W. 53) was sitting there only. P.W. 53 has also given evidence that the Petitioner asked him how the election fared and he told the Petitioner that his prospects were good, but the Respondent No. 1 had distributed . 1,000 and that Rs. 500 in Hirehandigol and Rs. 500 in Chikkahandigol and his prospects were spoiled.

74. The Respondent No. 1 has given evidence that Vasudev Ramappa Hadli of Hirehandigol and Bimanagouda were his polling agents and that had no canvassing agent in Chikkahandigol or Hirehandigol and that as Vasudev Ramappa Hadli and Bimanagouda had promised before the election that they would support him, he believed their words and appointed em as his polling agents. That, after the election, he (Respondent No. 1) came to know that Vasudev Ramappa Hadli and Bimanagouda had not supported him in the election. He has also deposed that what the Petitioner and Bimanagouda have deposed about his having given money and got it distributed in Chikkahandigol and Hirehandigol is false and what P.W. 4, P.W. 49 to P.W. 55 have stated in their evidence he having given money and got it distributed among the voters is false and that they have ted falsely because they are the followers of the Petitioner.

75. R. . 32 Veeranagouda Patil of rehandigol is a s path of the Congress and who was supporting the congress candidates during the election. He has given evidence that he had recommended the names of P.W. 3 and P.W. 4 to be appointed as polling agents of the Respondent No. 1 and P.W. 3 and P.W. 4 had supported the Petitioner d the end of the election.

76. It has been contended by the learned advocate on behalf of the Petitioner that Vasudev Ramappa Hadli, P.W. 3 and P.W. 4 were the polling agents of the Respondent No. 1 and they were also the canvassing agents of the Respondent No. 1 during the election and they were appointed as polling agents by the Respondent No. 1 just two or three days prior to the polling day which means that the integrety and the work of P.W. 3 and P.W. 4 had not been questioned or suspected by the Respondent No. 1 and P.W. 4 and Vasudev Ramappa Hadli had carried the good opinion of R.W. 32 Veeranagouda Patil who is a trusted supporter of the Respondent No. 1 and who had recommended the names of these two persons to appointed as polling agents. He has also contended that Chikkahandigol and Hirehandigol both fall within the territorial limits of Hulakoti Congress Mandal and Hulakoti, admittedly, is the stronghold of the Petitioner who hails from Hulakoti where the Petitioner commands lot of influence. That being the case, in a place like Chikkahandigol and Hirehandigol where the Respondent No. 1 could not get one single vote had got 149 votes and in Hirehandigol the Respondent No. had secured 345 votes, and t could not have been possible unless the Respondent No. 1 had caught the eyes of the voters by bribing them. He has also contended that P.W. 3 and P.W. 4 were recommended by no less a person than R.W. 2 who had stood firm and loyal by the Respondent No. 1 till the very end and according to whose evidence (R.W 32), P.W. 3 and P.W. 4 are good persons even now and therefore, their loyalty and sincerity could not be doub because it could not be said that P.W. 3 and P.W. 4 had changed their sides and they are not cheap witnesses either.

77. The learned Advocate for the Petitioner chas also urged that the letter dated 21st February 1962 produced with Ex. 377 (to be exhibited) is not a document to be attested under law ; its execution could be prov under section 67 of the Indian Evidence Act and its contents could proved under Section 3 of the Indian Evidence Act. That Section 64 of the Evidence Act requires the Petitioner to produce the document or get it produced which has been done, as that letter is produced before the Tribunal by P.W. 3 to whom it is addressed and therefore the letter has been produced through proper custody. He has also urged that the handwriting and its signature have been proved through P.W. 3 and P.W. 4 and hence the Petitioner has complied with the provisions of Section 67 of the Indian Evidence Act. That the contents of that letter has also been proved through P.W. 3 and P.W. 4 independently. Added to these, the Petitioner has also taken steps to summon the writer. Vasudev Ramap

Hadli and unfortunately, the services of the summons could not be effected and that the above letter was sent through P.W. 4, the trusted worker and polling agent of the Respondent No. 1 to P.W. 3 with the bribe money of Rs. 500 and there is absolutely no suggestion to these witnesses about the letter sent and the money paid by Vasudev Ramappa Hadli and that there is not even the remotest suggestion that the letter is fake or a forgery or in any way less than genuine. That being the case, he has urged, the Petitioner is relieved of the responsibility of the proof of the contents of that letter and also relieved of the responsibility of examining Vasudev Ramappa Hadli, because the letter has not been challenged, either for the purpose of execution or for the purpose of its contents. That the payment of the sum of Rs. 500 to P.W. 3 by P.W. 4 as per the direction of Vasudev Ramappa Hadli stands undisputed and unchallenged and the fact of distribution also remains unchallenged and the fact that P.W. 3 was the canvassing agent of the Respondent No. 1 also stands unchallenged and the further fact that the balance of Rs. 25 was refunded to the Respondent No. 1 also stands undisputed, and the only point challenged is the visit of the Respondent No. 1 to Hirehandigol in the company of Vasudev Hadli and that there is absolutely nothing in the cross-examination to show that P.W. 3 and P.W. 4 are interested or uttering falsely against the Respondent No. 1 and therefore, the allegations of bribery of Rs. 1,000 at Chikkahandigol and Hirehandigol stands fully established beyond any reasonable doubt.

78. In so far as the exhibition of a document is concerned Section 67 of the Indian Evidence Act enacts that if a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document must be proved to be in his handwriting. Handwriting may be proved or disproved in e following ways :—(1) by calling the writer ; (2) any person who actually saw him write or (3) by the evidence of the opinion of the experts under the provisions of section 45 of the Evidence Act. But, it is a settled law that mere identification of the signatures of t.e witness of any document does not amount to proving the execution of the document. here the correctness of the contents of a document is in issue, it should be proved by calling the executor of the document as a witness.—It is not enough to merely prove the signature or the handwriting of the person who is the only person who can depose to the correctness of the contents of the document. So, I admit the letter produced with Ex. 377 only for the purpose of execution of that document and not regarding the proof of its contents, as P. W. 3 is the person to whom it is addressed and P. W 4 is the person in whose presence that letter is alleged to have been written by Vasudev Ramappa Hadli.—I hereby permit the letter dated 21st February 1962 to be exhibited as Ex. 377-A for the limited purpose of execution only.

79. In the election petition, it is only the name of Vasudeva Ramappa dli of Chikkahandigol that has been mentioned and it is alleged therein

that Vasudev Ramappa Hadli had distributed the amount at Chikkahandigol and at Hirehandigol. Further, there is no mention of any writing or any letter in the election petition. According to the petition, the person who had given the information to the Petitioner are not mentioned.

80. The Petitioner has no personal knowledge of the above allegation in view of the verification in the petition.—According to the petition, tke votes were purchased by Vasudev Ramappa Hadli at Chikkahandigol and at Hirehandigol and it was Vasudev Ramappa Hadli who had distributed the money. But, in the Petitioner's evidence, there is a change in that version. In his evidence, it was Vasudev Ramappa Hadli who had purchased the votes at Chikkahandigol and distributed the money and in so far as the village of Hirehandigol is concerned, it was the Respondent No. 1 who had paid the money to Vasudev and Vausdev Ramappa Hadli had paid the money in the hands of P.W. 4 Bimanagouda and that money in turn was sent to P. W. 3 Virupaxagouda of Hirchandigol. That Vasudev Hadli had spend the money at Chikkahandigol and the balance was sent to Hirehandigol, and at Hirehandigol the money was distributed by Virupaxagouda. The names of P. W. 3 Virupaxagouda and P. W. 4 Bimanagouda are added by the Petitioner in his evidence. The Petitioner says in his evidence that he got the information of bribery about five or six days after the election, that is, more than two months before he filed the election petition. But, the Petitioner does not mention the names of the informants and he does not mention of the letter dated 21st February 1962 marked Ex. 377-A. The Petitioner mentions only the names of P. W. 3 and P. W. 4 in his evidence. But, makes no reference at all about the letter Ex.377-A either in his petition or in his evidence This is an important factor to be remembered in weighing the evidence of P. W. 3, P. W. 4. and the evidentiary value of the letter Ex. 377-A.

81. Ex. 166 is the issue of 'Deshavani' daily paper dated 12-2-1962, in which it is reported that the election meeting that was held at Chikahandigol on 10-2-1962 and according to that report, the Congress Party had that meeting on 10-2-1962 and requested the voters to vote for the Congress candidates, namely the Respondent No. 1, the candidate for the Assembly and Smt. Sarojini Mahishi the Congress Candidate for the Parliament. It is also reported in that paper that the Respondent No. 1 was also present in that meeting at Chikkahandigol and that the resolution in that meeting that the Congress Candidates for the M.L.A. and the Parliament, namely the Respondent No. 1 and Smt. Sarojini Mahishi was accepted with a cheer from the crowd thereby showing that even on10-2 1962 the people of Chikkahandigol were supporting the Congress Party and the Congress Candidates set up by the Congress. Ex. 218 is the issue of 'Nagarika' Daily dated 9-2-1962 produced by the Petitioner which is permitted to be exhibited as Ex. 218-A. Ex. 218-A and Ex. 166 also show that both the Respondent No. 1 and the Petitioner were making their respective propaganda in Chikkahandigol during the election.

82. Vasudev Ramappa Hadli is the most important witness in this case on this point. He has not been examined by the Petitioner in this case. Ex. 111 is the list of witnesses cited on behalf of the Petitioner. In that list, the name of Vasudev Ramappa Hadli is not given, though the names of Ganganagouda and Bimanagouda are shown therein. The list of witnesses, Ex. 111, for the Petitioner was filed on 3-11-1962 and in that list as I have already pointed out, the name of Vasudev Ramappa Hadli is not mentioned. At Ex. 460, which is an additional list of Petitioner's witnesses, was given by the Petitioner on 4-4-1963 and in that list, the name of Vasudev given is ; " Vasudev Ramappa *alias* Rangappa Hadli, through the Station Master, Railway Station, Gadag." The summons was sent to Vasudev Hadli as could be seen from the rozanama of this Tribunal. Ex. 479 dated 24-6-1963 was an application filed on behalf of the Petitioner praying for fresh summons to Vasudev Hadli and that application was allowed and summons to Vasudev Hadli was sent. But, it was returned unserved with the endorsement that the addressee was not known. In neither of these two summons to Vasudev, Vasudev had been asked to bring any document with him. Till 16-7-1963, no step was taken to secure the address of this witness Vasudev Ramappa Hadli. He is a regular servant of the railways and a permanent resident of Chikkahandigol and the witnesses for the Petitioner have stated that he Vasudeva Ramappa Hadli is still residing at Chikkahandigol. No steps were taken seriously by the Petitioner and Vasudev Hadli has not been examined by the Petitioner.

83. According to P. W. 3 Virupaxappa, it was Vasudev who had sent a sum of Rs. 500 with that letter Ex. 377-A; the fact that Rs. 25 was returned to the Respondent No. 1 does not find a place in the petition. Similarly, a sum of Rs. 2–12–0 was reported to have been remaining balance with P. W. 5 Basappa Gadagin with respect to the Asundi affair of 'Astagraha Shanti' and a sum of Rs. 30 was stated to have been remaining with P. W. 11 Budappa Ramappa Tirlapur with respect to the alleged hiring of the Binkadakatti bullock carts. This appears to be the technic of the evidence adduced on behalf of the Petitioner. Vasudev Ramappa Hadli is the only person, named in the petition and the alleged writer of the letter Ex. 377-4 is not examined.

84. The Petitioner has given evidence in his examination-in-chief that the name of the informant was Ganganagouda Guranagouda. In his cross-examination, the Petitioner had added the name of Bimanagouda also. The alleged informant Bimanagouda is neither cited nor examined by the Petitioner, and P. W. 4 Bimanagouda who has been examined on this point says that the (P. W. 4) had never informed the Petitioner. No polling agent of the Petitioner of Chikkahandigol or Hirehandigol has been cited or examined, by the Petitioner.

85. As mentioned above, according to the evidence of the Petitioner on this point, the person who gave the information about this matter

was Ganganagouda Gur agouda Goudar. But, the witness P. W. 53 examined by the Petitioner on this behalf, is not Ganganagouda Gurunagouda Goudar but P. W. 53 is Ganganagouda Iranagouda who is different from Ganganagouda Gurunagouda Goudar mentioned by the Petitioner in his evidence. So, the name of P. W. 53 Ganganagouda Iranagouda is neither mentioned in the election petition nor spoken to by the Petitioner in his evidence, and also the name of Ganganagouda Gurunagouda is neither mentioned in the petition nor examined by the Petitioner.

86. P. W. 49 to P. W. 55 were all the while in their village. Their names have not been mentioned in the election petition. None of these witnesses have been referred to by the Petitioner in his evidence. It may be said that the names of P. W. 49 to P. W. 55 are given in the list with Ex. 111. On cross examination of these witnesses P. W. 49 to P. W. 55, these witnesses have stated that for the last three months, they were in their respective villages. Why these witnesses have not been examined by the Petitioner along with P. W. 3 and P. W. 4 and why these witnesses have been examined long after as P. W. 49 to P. W. 55 is a circumstance showing that the Petitioner had taken time to improve his story.—The evidence of the witnesses P. W. 49 to P. W. 55 shows that they are all cheap witnesses. No explanation is given why these witnesses have been examined so late a stage in the evidence of the Petitioner and out of them the Chikkahandigol witnesses are the henchmen of Bimanagouda and those witnesses of Hirekandigol are the henchmen of Virupaxagouda.

87. According to the petition, it was Vasudev Ramappa Hadli who had distributed Rs. 1,000. The evidence led in by the Petitioner shows that at Hirehandigol, Vasudev Hadli had nothing to do with the actual distribution of money, because it was P. W. 3 Virupaxagouda alone who had distributed the money at Hirehandigol and P. W. 4 Bimanagouda does not swear to any distribution of money at Hirehandigol.

88. The letter Ex. 377-A appears to be a concocted letter. The way in which the witnesses have been asked to produce that letter and the way in which that letter has been produced and also the discrepancies in that letter and the evidence regarding it from the mouths of P. W. 3, P. W. 4 and P. W. 53 all show that the letter Ex. 377-A cannot be a genuine document. That letter is in Kannada, the date is in Kannada, but the signature is in English. There is absolutely no evidence on record to show that Vasudev Ramappa Hadli is the person who knows English from the materials placed on record. From the evidence on record it appears that Vasudev Ramappa Hadli is a Gang-Coolie in the Railways and even P. W. 3 Virupaxagouda who claims to be the classmate of Vasudev Hadli does not say that Vasudev Ramappa Hadli knows English atleast to sign. The evidence of P. W. 3 and P. W. 53 regarding the letter is far from satisfactory and the evidence of P. W. 53 is very suspicious and the evidence of P. W. 53 shows that he was sent for by Vasudev Hadli

just to see him iting the letter and to be a witness for that transaction. Absolutely no reason is forthcoming from the evidence of P. W. 53 why he (P. W. 53) was sent for by Vasudev Ramappa Hadli. P. W. 53 appears to be a chance witness or made to appear witness and his evidence is miserably artificial and unreliable. Whatever the document may be, it cannot be used in evidence until its genuineness has been either admitted or established by convincing proof, both of which are very badly lacking in the instant case. Although under Section 67 of the Indian Evidence Act, no particular kind of proof is required for the purpose of establishing the fact of execution, it must nevertheless be shown to the satisfaction of the Tribunal that the signature denoting the execution was actually fixed to the document by the person who profess to execute it. It is a settled law that the mere identification of the signature of the witnesses of any document does not amount to proving of the execution of the document.

89. Where the correctness of the contents of a document is in issue, as in the instant case, that should be proved by calling the executor of a document as a witness. It is not enough to merely prove the signature or the handwriting of the person who is the only person who can depose to the correctness of the contents of the document. Where there has been no admission as to the execution of a document which has been produced, it becomes necessary to prove the handwriting, signature or execution thereof. To treat the fact of signature as a physical fact, apart from the circumstance that the signature is intended as an expression assent to the document, is to go out of one's way to be wrong.

90. P. W. 3 Virupaxagouda says that he is a classmate of Vasudev Ramappa Hadli and P. W. 3 has given evidence that it was about 12 or 13 years that he left the Kannada School where Vasudev Ramappa Hadli was his classmate and P. W. 3 admits that he and Vasudev Hadli have not served thereafter anywhere together. The evidence of P. W. 3 regaraing the letter Ex. 377-A is most unsatisfactory. P. W. 3 simply says that he knows, recognises and identifies the handwriting of Vasudev Ramappa Hadli. He does not say either in his examination-in-chief or in his cross-examination how he was acquainted with the handwriting of Vasudev Hadli. Merely saying that Vasudev Hadli and P. W. 3 were classmates is not sufficient, unless it is shown that they were acquainted with each other handwriting and whether they were communicating with each other through letters. A bald statement as the one made by P. W. 3 is not legal evidence of any knowledge of the handwriting of Vasudev Hadli. Admittedly, these two persons were classmates about 12 or 13 years ago and it is also admitted that they never served together. As Osborn, the leading author on questioned documents says in his book, " The Problem of Proof " "In the interest of justice it should be better pnown thatabcut the weakest and most inconclusive testimony that is ever kresented in a Court of law is the usual opinion testimony of lay witnesses regarding handwriting. It is possible for an occasional lay witness to

become familiar with a particular signature by seeing it often and under conditions that enable the observer to gain a knowledge of its features and qualities. But, even this knowledge in almost every case covers only an acquaintence with the general appearance of the signature as a whole. As every imitation takes on some elements of this general appearance, and a tracing, if will made, very closely approximates the general appearance of the genuine model from which it was traced, a dependence on general appearance alone on which to base an opinion that a signature is genuine is always dangerous." I am not at all convinced with the nature of proof of this letter Ex. 377-A in this case. At best, this letter will give rise to a strong suspicion, but mere suspicion, however strong, cannot take the place of proof. (A. I. R. 1957 Supreme Court 637). Therefore, I hold that the contents of Ex. 377-A is not convincingly proved and therefore I cannot accept the letter.

91. The next important witnesses examined on this point by the Petitioner are P. W. 3 Virupaxagouda and P. W. 4 Bimanagouda.

92. According to the evidence of P. W. 3 Virupaxagouda, he distributed a sum of Rs. 475 to the voters at Hire handigol at the rate of Rs.5 per vote and in that manner won over about 100 to 150votes and refunded the balance of Rs. 25 to the Respondent No. 1. He has also given evidence that about two or three days before the polling day, the Respondent No. 1 and Vasudev Hadli and some others had come to his village and they said the voters should be won over and accordingly, P. W. 3 bribed the voters and won over about 100 to 150 votes. P. W. 4 Bimanagowda has also distributed a sum of Rs. 500 at Chikkahandigol village for the voters at the rate of Rs. 5 per vote and telling the voters to vote for the Respondent No. 1 and according to P. W. 4, he had won over 200 votes in this manner. From the evidence of these two witnesses, it could clearly be gathered that P. W. 3 and P. W. 4 worked as the agents for bribing the voters which is a corrupt practice under Section 123(1) of the R. P. Act. So, if the evidence of these two witnesses is to be accepted as true, then they must be held to have acted as agents in connection with the election and they must be held to have acted with the consent of the candidate and the intention of having paid the money according to these two witnesses, was to induce the voters to vote for the Respondent No. 1.

93. An accomplice is one concerned with another or others in the commission of a crime. The expression 'accomplices' may include all particeps crimins. An accomplice is a person who is a guilty associate in crime or who sustains such a relation to the criminal act, that he can be jointly indicated with the principal offender.

94. The next question that will have to be considered is, whether P. W. 3 and P. W. 4 can be classified under the head 'accomplices'. In view of the admissions made by them with respect to the perpetratiuo

of the alleged commission of the corrupt practice of bribing. Section 90 of the R.P. Act enacts that the provisions of the Indian Evidence Act shall, subject to the provisions of the R. P. Act, be deemed to supply in all respects to the trial of an election petition. In A. I. R. 1957 Supreme Court 444, it has been held that charge of corrupt practices are quasi-criminal in character. Bribery is a corrupt practice under Section 123(1) of the R. P. Act. Therefore, Section 133 and Section 114(*b*) of the Indian Evidence Act which relate to the evidence of accomplices are also applicable to the witnesses of the election Petition, he cause, the trial of an election petition is quasi-criminal in character.

95. Therefore, where witnesses admit that they were cognizant of the crime (corrupt practice of bribery in this case) as to which they testify and they took no means to prevent the commission of the alleged crime, their evidence must be considered as no better than those of accomplices,because an accomplice means a person who knowingly or voluntarily co-operates with or aids and assists another in the commission of a crime. In A. I. R. 1929 Lahore 540, it has been held that witnesses who admittedly had witnessed the crime, who have assisted in concealing the evidence of that crime, or at least connived at such being done and who have not attempted to give any information either to the police or to any other person to enable the offenders to be brought to justice, are in a very little better position than that of accomplices, and it would be unsafe to accept their testimony unless corroborated by some indipendent circumstances.

96. Persons who actually pay bribes or co-operate in such payments or are instrumental in the negotiations for that purpose are also accomplices of the person bribed. (14 Bombay 115). In Bribery cases, a distinction must be drawn between a person who is threatened and becomes accomplice and a person who voluntarily takes part in the crime of bribery. In the former case, the corroboration necessary to establish the credit of such a person would be very much less than in the latter case. The evidence of an accomplice is unworthy of credit, because an accomplice is unworthy of credit, because an accomplice is an immoral person and he has little sanctity forthe oath and his evidence would certainly require a greater amount of corroboration than in the case of a person who is. compelled by force of circumstances to give bribe.

97. In the instant case, and in the allegation in question, it is admitted by both P.W. 3 and P.W. 4 that they had distributed the money to the voters in the villagers of Hirehandigol and Chikkahandigol to the voters on the eve of the polling, with the specific intention or object of winning over the votes for the Respondent No. 1, and they had knowingly and voluntarily co-operated with or aided and activitely assisted Vasudev Ramappa Hadli in the commission of the alleged crime of bribing the voters during the election, or at least they had connived at such being done and they had not attempted to give any information either to the police

or to any person to enable the alleged offenders to be brought to justice, and therefore P.W. 3 and P.W. 4 are in a very little better than that of accomplices, and consequently, they being shown to be accomblices, it would be unsafe to accept their testimony unless corroborated in material particulars by some independent circumstances. Their evidence is not only unworthy of credit, but it would be most dangerous to arrive at a finding of a guilt unless their testimony is corroborated on material particulars by other evidence.

98. The evidence of P.W. 3 and P.W. 4 absolutely stands uncorroborated. P.W. 3 has given evidence that Vasudev Ramappa Hadli had told him that the amount remained as the balance should be handed over back. P.W. 3 did not hand over to Vasudev Hadli, but he says that he had handed over that amount direct to the Respondent No. 1, as P.W.3 thought that as he knew the Respondent No. 1, it would be better acquainted with him. That reasoning of P.W. 3 does not appear to be natural and probable, because according to the evidence of P.W. 3, he already knew the Respondent No. 1 and so no further acquintance was necessary. P.W. 3 does not even state when he met Vasudev Ramappa Hadli and when Vasudev Hadli had told him to return back.

99. P.W. 4 has given evidence that he does not know Vasudev Hadli much and it is very improbable that Vasudev Hadli had alleged to have handed over a heavy amount and an incriminating letter Ex. 377-A to such a person. There are material discrepancies between the evidence of P.W. 3 and P.W.4 on this point and I am not at all satisfied and convinced with the story of P.W. 3 and P.W. 4 either on the point of bribery or on the point of letter.

100. The author of that letter Ex. 377-A is not examined and no convincing explanation is forthcoming for his non-examination. The two witnesses P.W. 3 and P.W. 4, who swear on this point cannot be believed, as they are accomplices and their evidence remain uncorroborated on material particulars, and the evidence of P.W. 3 and P.W. 4 cannot also be believed because one witness says that he knows the handwriting of Vasudev Ramappa Hadli, but he says that he was the classmate of Vasudev Hadli about 12 or 13 years ago and that they had never worked together. The other witness also swears that they are classmates, and in the cross-examination, he states that he was present when the letter was written and signed by Vasudev Hadli and the letter itself has not been mentioned in the election petition nor the Petitioner refers to it in his evidence.

101. The Respondent No. 1 had secured only 149 votes at Chikkhandigol (Ex. 366), while P.W. 4 Bimanagouda has given evidence that he himself had won over 200 votes for the Respondent No. 1 at Chikkahandigol and the evidence of P.W. 4 is falsified by the number of votes 149 secured by the Respondent No. 1 at Chikkahandigol. The Petitioner had secured 448 votes at Chikkahandigol. At Hirehandigol where there

were two polling stations, the Petitioner had secured 100 votes while the Respondent No. 1 had secured 345 votes. The alleged amount was said to have been distributed on 21-2-1962. From the report of Deshavani in Ex-166, it is seen that even as early as on 10-2-1962, the voters of Chikka-handigol had considerably supported the congress candidates as could be seen from the report therein.

102. For the reasons stated above, I disbelieve the genuineness of the letter Ex. 377-A, I am unable to accept the contention of the learned Advocate of the Petitioner on this point and I hereby hold that the Petitioner has failed to prove the allegations contained in para 5 (*a*) (iii*a*) of the petition.

103. The next allegation mentioned in the petition is at para 5 (*a*) (iv) of the petition.

104. The allegation in para 5 (a) (iv) of the petition is that on 9–2–1962, the Respondent No. 1 took advantage of the presence of most of the Chairman, Vice-Chairmen and the Secretaries of the Village Panchayats in the Gadag-Assembly Constituency and treated them to tea and refreshments and footed the bill of about Rs. 25 and got their promises of votes and support by so treating them.

105. The Respondent No. 1 has stated in para 17 of his written statement Ex. 36 that the allegations in para 5 (a) (iv) of the petition are all false and denied and the allegation that he treated the Chairman, Vice-Chairmen and the Secretaries in the Village Panchayats in Gadag Assembly Constituency is false and it is false that he footed the bill.

106. This is spoken to by the Petitioner, P. W. 56 and P. W. 59 and by the Respondent No. 1, R. W. 14, R.W. 17 and R. W. 24. The newspapers relied upon are Ex. 162, Ex. 163, Ex.184, Ex. 185 and Ex. 217, Ex. 51 is the list of documents produced by the Block Development Officer, Gadag (to be exhibited), Ex. 237 is a notice filed by the B. D. O. Department, Ex. 238 a vouchers file produced by the B. D. O. Department and Ex. 239 is the correspondence file of the said department. Sl. No. 2 with Ex. 51 is the proceeding book. As it is a public document, I allow it to be exhibited, as Ex. 51-A.

107. The Petitioner has given evidence that on 9–2–1962, there was the meeting of the Village Panchayat of the Vice-Chairmen, Chairmen and Secretaries at Taluka Development Office at Gadag and that after the meeting was over, the Respondent No. 1 stood tea to all the Sara-panchas present there and a sum of Rs. 25 was the expenses incurred in connection with it. That the Respondent No. 1 told them that he had stood for the election and that they should help the Respondent No. 1 in voting for him and get votes for him in the village and that they all promised to help the Respondent No. 1. He has also given evidence

that P. . 56 Martandappa Mulimani who is the Chairman of the Binkadakatti Village Panchayat was also present in that meeting and the Respondent No. 1 attended that meeting, as he is a member of the T. D. B. The Petitioner has also given evidence that about a sum of Rs. 25 was spent by the Respondent No. 1 and R. W. 24 Mulgund who is the President of the T. D. B. said that the above amount might be returned to the Respondent No. 1 and that amount might be spent out of the T. D. B. fund and it was debited accordingly. He has given further evidence that P. W. 56 Martandappa Mulimani told him that day that the Respondent No. 1 had stood tea and requested that votes should be given to him.

103. P. W. 56 Martandappa Mulimani of Binkadakatti has given evidence that on 9-2-1962, the Respondent No. 1 was requested to perform the opening ceremony of the Agricultural and Industrial Exhibition and the Respondent No. 1 opened the same and the Petitioner who was then present objected to the opening of that exhibition by the Respondent No. 1 on the ground that it was not in the programme and left the function and went away, and that after the function was over, the Respondent No. 1 called all the Secretaries, Chairman, and Vice-Chairman and told them that he had stood for the election and all should support him. That the Respondent No. 1 asked tea shop man what was the bill and when the tea shop man said the bill was Rs. 25, the Respondent No. 1 gave that amount in the hands of Sri Naregal, the Block Development Officer. P. W. 56 has also given evidence that R. W. 24 Mulgund came there and told the B. D. O. to return that amount to the Respondent No. 1 and that he (R. W. 24) would debit that amount to the T. D. B. account P. W. 56 has given further evidence that he told the Petitioner two or three days after the function.

109. P. W. 59 Venkatappa Bheemappa Gudareddy of Hulakoti has given evidence that after the close of the aforesaid exhibition, the Respondent No 1 said to the people assembled to take tea, tea was served and after the tea, the Respondent No 1 asked what the bill was to Sri Naregal and the tea boy said that it was Rs. 25 which was paid by the Respondent No. 1 and R. W. 24 Mulgund asked Naregal what the bill was and Sri Naregal said that the amount had been paid by the Respondent No. 1 for which R. W. 24 said that it was incurred by the Seminar and might be debited to the Seminar and why the Respondent No. 1 should incur the expenses.

110. The Respondent No. 1 has given evidence that on 7-2-1962, he opened the Agricultural and Industrial Exhibition at Gadag and that he did not attend the T. D. B. Seminar either of the 7th or of the 8th and that it is false that he attended the T. D. B. Seminar and stood for tea and that it is false he gave Rs. 25 for the tea. He has given evidence that P. W. 56 Mulimani and P. W. 59 Gudaraddy state so because they are

the friends of the Petitioner and t t they had been got elected in the T.D.B. elections through the instrumentality of the Petitioner in 1960 and that he had not attended the last day (9-2-1962) of the Seminar meeting.

111. R. W. 14 Chanabasappa Hosur, was the District Development Assistant to the Deputy Commissioner at Dharwar in 1962, has given evidance that on 9-2-1962 he was the Chief guest in the T. D. B. Seminar, that tea was given on the upper storey of the Central Bank and that the Respondent No. 1 was not present on 9-2-1962 for any function.

112. R. W. 17 Basappa Ramappa Naregal the Block Development Officer has given evidence that he had not supported any candidates during the election of 1962 and that the Taluka Seminar took place from 7-2-1962 to 9-2-1962 at Gadag in the usual course as was done in the previous years. That on 7-2-1962, the Agricultural and Industrial Exhibition was opened by the Respondent No. 1 and on 9-2-1962, the programme was over, there was tea on the upper storey of the K. C. C. Bank in which, R. W. 14 Hosur was the chief guest at that tea party and that the Respondent No. 1 was not present at the tea party and it is not true to suggest that the Respondent No. 1 offered to him Rs. 25 in connection with the tea bill. He has given evidence that the Respondent No. 1 did not pay him the money for the bill, and he has spoken to about the receipt Ex. 523, the bill Ex. 529 and other documents from his office, and he has given further evidence that on 7-2-1962, the item of the bill came to Rs. 23-54 nP. The item of the bill on 10-2-1962 came to 0-69 nP. the remaining amount of Rs. 107-35 nP. was spent on 9-2-1962 for the tea party on that day and that the T.D.B. had given approval for the total amount of Rs. 831-50 nP. spent for the Seminar and the Agricultural Exhibition.

113. R.W. 24 Veerappa Rudrappa Mulgund the dummy candidate for the Respondent No. 1 and the President of the T.D.B. has given evidence that the T.D.B. Seminar was conducted from 7-2-1962 to 9-2-1962 and that it took place in the usual course of the business. That there was a tea party on 9-2-1962 after the function at the upper storey of the K.C.C. Bank and that the Respondent No. 1 was not present on 9-2-1962 nor for the tea party and that it is false that the Respondent No. 1 was present at the tea party and that he offered a sum of Rs. 25.

114. It is not mentioned in the petition, the place and the names of any person or persons are not mentioned in the petitions and it is not pleaded that the meeting was called earlier than when it should have been called. The documents produced along with Ex. 51 are the documents from the B.D.O. Office ; they are all public documents called for by the Petitioner and they are exhibited, as they are admissible under Section 74 of the Indian Evidence Act.

115. In the evidence of the Petitioner, the place is given as Taluka Development Board Office at Gadag on 9-2-1962 and the Petitioner has given evidence that tea was given to all the Sarapanchas present there. He does not say that tea was given to the Chairman, Vice-Chairman and Secretaries, as alleged in the petition. Instead of footing the bill, as alleged in the petition, the Petitioner has given evidence that the expenses incurred was Rs. 25. From the evidence of the Petitioner, it is seen that the footing of the bill was not at all there and he has no 'personal knowledge of this allegation in view of his verification in the petition. The amount of Rs. 25 was still kept up by him in his evidence, but he says that R.W. 24 Mulgund said that the above amount spent by the Respondent No. 1 should be debited by the T.D.B. fund.

116. The presence of P.W. 56, Martandappa Mulimani is not mentioned in the petition. His name has been introduced in the Petitioner's evidence. R.W. 24 Mulgund was the President of the T.D.B. then. The Petitioner says that the Respondent No. 1 had paid the bill of Rs. 25, but the documents of the T.D.B. with the list Ex. 51 show that it was the T.D.B. which met the expenses and therefore, the Petitioner has to improve his story that the amount of Rs. 25 spent by the Respondent No. 1 was debited in the T.D.B. fund and this improvement was made in the Petitioner's evidence with a view to get over the difficulty of the tea bill standing in the name of the Taluka Development Board. It should be remembered that when the Petitioner was examined on this point, the relevant documents produced with Ex. 51 from the B.D.O's Office were already summoned before this Tribunal and the Petitioner had an opportunity of seeing those documents before he gave evidence on this point.

117. Ex 162 is the issue of Deshavani of 7-2-1962 and the report of the publication is 6-2-1962. According to the Respondent No 1, the meeting referred to in Ex 162 was the meeting of the T D B convened during the regular course of business, and it was not meant for any other purpose, particularly it was not meant for election purposes. According to Ex 162, the meeting of the T D B was held in the compound and not in the T D B Office. Ex 184 the issue of Navanagarika dated 7-2-1962 gives more or less the same report mentioned in Ex 162. There also, it is reported that the T D B meeting had taken place in the compound and not in the T D B Office. It also shows that the meeting was held not for any other purpose other than its usual business.

118. Ex 163 is another issue of Deshavani dated 8-2-1962 and the relevant report is dated 7-2-1962 which says that the opening of the Agricultural and Industrial Exhibition was made by the Respondent No. 1 at the request of R W 24 Mulgund. This request appears to be usual, as the Respondent No. 1 was the then sitting M L A. The same report is also made in Ex 185, the issue of the Navanagarika dated 8-2-1962. In Ex 185, the summary of the speech made by the Respondent No. 1 is also

re rted and that sp h does not refer to an hing about the election. The aforesaid reports only refer to the conduct of the meeting of the T D B and they do not report absolutely anything about the election matter at all Ex 217 is the copy of the Nagarika daily dated 7-2-1962 and the relevant report is dated 6-2-1962. Nagarika daily is the paper which strongly supported the Petitioner during the election and the proprietor, editor and the owner of that paper P W 35 Hombali, openly supported the Petitioner during the election. Even this report of Ex 217 shows that the T D B meeting had taken place in the normal course of business and not for the purposes of election as alleged by the Petitioner

119 Ex 327 is a bill for Rs 107-37 nP given in the name of the T D B. at Gadag and that bill was passed for payment in the name of the T D B. Ex 659 is another bill submitted to the T D B Office for the refreshments given on 7-2-1962 and on 10-2-1962 the bill amounting to Rs 23-54 nP on 7-2-1962, and 0-69 nP for 10-2-1962 making a total of Rs. 24-18 nP. This was also passed for payment by R W. 24 Mulgund, as the President of the T.D.B. It is in evidence that a sum of Rs. 107-37 nP. and Rs. 24-18 nP. were together paid by the T.D.B. on 3-3-1962 as per Ex. 523, after giving deduction to an advance amount of Rs. 60 already paid on 10-2-1962 and the balance of Rs. 71-55 nP. was paid on 3-3-1962. (Ex. 660 shows the detailed contingent bill of the Panchayat Seminar and Agricultural Exhibition submitted by the T.D.B. and the relevant entry is item No. 22 and against that entry, contingent bill showing the total amount of Rs. 131-55 nP. (Rs. 107-37 nP. *plus* Rs. 24-18 nP). Thus it is seen that there is absolutely no bill of Rs. 24-80 nP. and it is not the bill of 9-2-1962 as alleged by the Petitioner in the petition.

120. The allegation that the T.D.B. function was held earlier than the usual and that the Block Development Officer was forced to put it earlier is unfounded. The Petitioner and P.W. 59 Gudareddy, both seem to have misled or misunderstood the circulars issued by the Deputy Commissioner. P.W. 59, after the document was put to him, clearly admits that what he relied upon related to the District Board Seminar and not to the Taluka Board Seminar and he also admits that the T.D.B. meetings are held before the District Level Seminars are held.

121. It is seen from the evidence that it was the T.D.B. that had paid the bill of 9-2-1962 for tea. The election petition alleges that the Respondent No. 1 footed the bill ; the evidence led in is to the effect that the Respondent No. 1 did not pay, but he wanted (offered) to pay, but the T.D.B. paid it. This is a change and an improvement made by the Petitioner, as the documents of the T.D.B. summoned by him show that the bill was footed by the T.D.B. and not by the Respondent No. 1.

122. The Petition does not mention where the tea party was given and the Petitioner says in his evidence that the tea party was given in the T.D.B. Office. P.W. 56 and P.W. 59 have given evidence that the tea was given after the meeting and after Mr. Hosur left, in the pendal.

123. P.W. 56 Martandappa Mulimani and P.W. 59 Gudareddi have given evidence that the Respondent No. 1 requested support in his election and that request was made on 7-2-1962 (not on 9-2-1962) and P.W. 59 does not speak any seeking of support by the Respondent No. 1 on 9-2-1962 and that the Respondent No. 1 took the promise by going round. It is in evidence that immediately after the meeting on 9-2-1962, the tea was given in the K.C.C. Bank.

124. The receipt Ex. 523 shows that the bill of Rs. 24–18 nP. and another bill for Rs. 107–37 nP. making a total of Rs. 131–55 nP. was paid as follows, namely, Rs. 60 as advance on 10-2-1962 and Rs. 71.55 nP. on 3-3-1962 both paid by the T.D.B. and Ex. 660, the detailed contingent bill, item No. 22 dated 3-3-1962 is for Rs. 131–55 nP.

125. At the time of the arguments, it was urged on behalf of the learned Advocate for the Petitioner that R.W. 17 (Sri Naregal) and R.W. 24 (Sri Mulgund) have committed acts of forgery of public records just to help the Respondent No. 1 and the T.D.B. Seminar was held earlier than the usual, in furtherence of their prospects of the election of the Respondent No. 1. I cannot go into those allegations, because those allegations were not pleaded in the petition, and therefore, any amount of evidence cannot be a good substitute for want of proper pleadings. (1964 Mysore Law Journal 488 (September 1964 issues) Deviah *Vs.* Nagappa).

126. For the reasons stated above, I hold that the Petitioner has failed to bring home the guilt of the Respondent No. 1 with respect to the allegations mentioned in para 5 (*a*) (iv) of the Petition.

127. The next allegation in mentioned a para 5 (*a*) (v) of the Petition.

128. The allegation of para 5 (*a*) (v) of the petition is that on 22-2-1962, that is on the polling day, volunteers and voters of Binkadakatti and Hulakoti were treated to tea and refreshments in the tea shop of Basappa Shantagiri of Hulakoti. The bill of Rs. 113–25 nP was footed by G. R. Hiregoudar, the canvassing and polling agent of the Respondent No. 1 on 23-2-1962.

129. The Respondent No. 1 has stated in para 18 of his written statement Ex. 36 that the allegations in para 5 (*a*) (v) of thepetition are all false and are denied and the treating alleged therein is false. That Sri G. R. Hiregoudar was only a polling agent of this Respondent whose duties were restricted to watching the interest of this Respondent at the Polling Station and it is false that Hiregoudar footed the bill as alleged.

130. The above allegation is spoken to by the Petitioner, P.W. 2, P.W. 7, P.W. 10, P.W. 11, P.W. 33, P.W. 37, P.W.63, and by the Respondent No. 1; and R.W. 5. The relevant document is the account book produced by Basappa Shantagiri.

131. The Petitioner has given evidence that Binkadakatti and Hulakoti are in the Gadag Constituency and Basappa Shantagiri of Hulakoti is running a tea shop at Hulakoti and R.W. 5 G. R. Hiregoudar, a polling agent of the Respondent No. 1 and canvassing for him, is also from Hulakoti Mandal Congress Committee. He has given evidence that G. R. Hiregoudar gave tea for all those who came to vote for the Respondent No. 1 from Binkadakatti and Hulakoti and had a credit khata for the same in the shop of Basappa Shantagiri and R.W. 5 took the money from the Respondent No. 1 and paid off the dues in that khata and that the Petitioner came to know that a sum of Rs. 113–25 nP. were the expenses incurred for this tea. He has given further evidence that P.W. 2 Udachappa Bharmappa Nimbanaikar of Hulakoti told him about this after the election and he is not on good terms with G. R. Hiregoudar. He has also given evidence that he had secured 1,446 votes and the Respondent had secured 220 votes from Hulakoti and Binkadakatti.

132. P.W. 2 Udachappa Bharmappa Nimbanaikar of Hulakoti has given evidence that on the polling day voters from Binkadakatti came to Hulakoti and R.W. 5 Hiregoudar took them for their taking tea in the shop Basappa Shantagiri and that he (P.W. 2) was standing near the carts and P.W. 2 was also invited to take tea and laddu, khara and tea were served. He has also given evidence that Hiregoudar said that it was the tea of the Respondent No. 1 and after the voters had taken tea, they should vote for the Respondent No. 1 and that the Respondent No. 1 had asked him (Hiregoudar) to make those arrangements. That was about 9 or 10 A.M. P.W. 2 has deposed that about 100 to 150 persons who were taken in this way for tea to the said shop and that Hiregoudar took them for voting to the Kannada School where there was the Polling Station and that Basappa Shantagiri was being told by Hiregoudar that the bill for the tea served on that day should be debited to him and that would be on behalf of the Respondent No. 1.

133. P. W. 7 Basappa Mallappa Shantagiri of Hulakoti (the tea shop keeper) has given evidence that during the election of 1962, R. W. 5 Hiregoudar had asked him to open a khata in his tea shop on behalf of the Respondent No. 1. That on 19-2-1962, Hiregoudar called him to his house and the Respondent No. 1 was also there at that time and R. W. 5 Hiregoudar told P. W. 7 that he should keep ready eatables like, khara, laddu which would suffice for 300 to 400 persons and said that R. W. 5 had received the money from the Respondent No. 1 and R. W. 5 himself would pay the money after the election was over and the account was to be maintained for three days, namely, on the 20th, 21st and 22nd of February 1962.

134. P. W. 7 Basappa Shantagiri has also given evidence that on the polling day, Hiregoudar was bringing the voters of Binkadakatti and Hulakoti to the tea shop and he (P. W. 7) was giving them laddu, khara and tea and that he opened his tea shop on that day at 7 A.M. and

the treating was going on till 6 P.M. and the total bill for the three days was Rs. 113–25 nP. which Hiregoudar had paid to him on the next day after the election. He has also given evidence that the account book produced by him is Ex. 387 and Ex. 387-A is the relevant khata at page 96 the writing of which is in his hand.

135. P. W. 10 Kariyappa Madival of Hulakoti (a washerman) has given evidence that he washes the clothes of R. W. 5 Hiregoudar and that Hiregoudar had asked him to vote for the Respondent No. 1 and threatene him that if he did not vote in that manner, R. W. 5 would dispense with his services of washing clothes for him and that he (P. W. 10) told Hiregoudar that if he discontinued his services (P. W. 10) would be deprived of his bread and he would act up to what R. W. 5 told him. P. W. 10 has also given evidence that Hiregoudar came to the tea shop of P. W. 7 on the polling day and sent for P. W. 10 ; he went there and R. W. 5 asked him whether he (P. W. 10, had instructed all people as told by him and P. W. 10 said yes. Then R. W. 5 instructed him that the rubber stamp was to be affixed, and that P. W. 10 had taken all the people to the tea shop and refreshments and tea were given to them and those refreshments were given to them on the instruction of R. W. 5 who told Basappa Shantagiri that the charges should be credited to his account.

136 P. W. 11 Budappa Ramappa Tirlapur of Binkadakatti has given evidence that on the polling day, he took ten cartmen and the voters from Binkadakatti to Hulakoti, in all about 100 persons, went to Hulakoti, met Hiregoudar there who took the voters to the tea shop of Basappa Shantagiri where refreshments were served to the voters and where R. W. 5 instructed the voters how to vote and R. W. 5 told Basappa Shantagiri to debit the expenses in his name

137 P. W. 33 Rangappa Ramappa Rangappanavar, P. W. 37 Kenchanagouda Tirakappa Agasanakop and P. W. 63 Ranganagouda Venkanagouda Timmanagoudar are the cartmen from Binkadakatti who have given evidence that they and the voters in their carts had taken tea and refreshments in the shop of P. W. 7 at Hulakoti on the polling day and these witnesses speak to the presence of R. W. 5 in the tea shop and corroborate the evidence of other witnesses on this point.

138 The Respondent No 1 has given evidence that he did not know P. W. 7 Basappa Shantagiri of Hulakoti before and that he (Respondent No 1) saw him only when he gave evidence before this Tribunal and it is not true to allege that in his tea shop, he got arrangements to serve tea for the voters of Hulakoti and Binkadakatti as alleged. He has given further evidence that R. W. 5 Hiregoudar had supported him in the last election.

139 R. W. 5 Govindagouda Ramanagouda Hiregoudar of Hulakoti has given evidence that there is enmity between him and the Petitioner

for the past about 13 to 14 years. That he and one Krishnappa Hosmani agreed to be the polling agents of the Respondent No. 1 and both of them were authorised in that behalf. He has also given evidence that as there was no agent on behalf of the Congress candidate, Smt. Sarojini Mahishi, he (R. W. 5) became her agent and Krishnappa Hosmani became the Respondent No. 1's polling agent and that on the polling day, he (R. W. 5) had gone to the Polling Station at 7-30 A.M. and was there till the polling was over and he got his food there only.

140. R. W. 5 has also given evidence that P. W. 7 Basappa Shantagiri is a peon in the Gramapanchayat and the father of P. W. 7 runs the tea shop and that R. W. 5 had not made any arrangements for tea for voters during the election time and that he did not meet any persons in the tea shop and taught them to vote and it is false that he had paid Rs. 113-25 nP. for the bill to the tea shop. He has also given evidence that P. W. 2 is a farm servant of the Petitioner and P. W. 7 and P. W. 10 are the underlings of the Petitioner and that he (R. W. 5) is not on good terms with P. W. 11 Budappa Ramappa Tirlapur and that P. W. 11 had worked against him in the T.D.B. election of 1960 and that P. W. 11 had deposed falsely that he (R. W. 5) had told him to arrange to bring voters from Binkadakatti in carts and back, and P. W. 10 Kariyappa is the washerman of the Petitioner and not his washerman and it is false to say that he threatened P. W. 10 as alleged by him.

141. It has been contended on behalf of the Petitioner that P. W. 7 Basappa Shantagiri is a businessman and he has maintained his accounts according to the custom of his trade and there is absolutely nothing on record to indicate why the testimony of this disinterested indepedent witness should not be believed, as his evidence is not tainted in any manner whatsoever and whose evidence is fully corroborated in all material particulars by the persons who had taken tea and refreshments on the polling day and hence, the Petitioner and his witnesses have made out a clear case against the Respondent No. 1 under Section 123 (1) of the R. P. Act.

142. The evidence of the Respondent No. 1 and his witnesses R. W. 2, R. W. 3, R. W. 5 and R. W. 19 disclose that the villagers of Hulakoti and Binkadakatti are very much under the control and influence of the Petitioner. P. W. 56 Martandappa Mulimani and Neelappa Karur were the polling agents of the Petitioner and P. W. 56 Martandappa Mulimani and Neelappa Karur are from Binkadakatti and P. W. 59 Gudaraddi was elected in the T.D.B. election of 1960 defeating the congress candidate R. W. 5 Govindagoudar Hiregoudar. The fact that no election meetings were held at all by the Respondent No. 1 either at Hulakoti or at Binkadakatti is admitted by P. W. 2 Udachappa at para 15 of his evidence and the Respondent No. 1 and his witnesses have sworn that no meetings were held in those two villages during the election.

143. According to the Petitioner, he has no personal knowledge of this allegation and according to the Petitioner's witnesses, tea was going on under the direct and personal supervision of R. W. 5 Hiregoudar from 7 A.M. to 6 P.M. on the polling day. The important fact that throws considerable light on this matter is that the Respondent No. 1 had secured only 220 voters in Hulakoti and Binkadakatti villages, while the Petitioners had secured 1,446 votes from those two villages.

144. According to P. W. 11 Budappa Ramappa Tirlapur, 65 votes (namely 30 plus 35 that could be gathered from his evidence) were secured for the Respondent No. 1 from Binkadakatti (also refer the evidence of R. W. 3 Devaraddeppa Govindaraddy Tirlapur para 10, where R. W. 3 has given evidence that he had supported the Respondent No. 1 in his election openly and that the votes of 6 or 7 families would be about 60 to 70 votes and those families are of Tirakappa Basavaraddy, Hanumappa and himself. In Hulakoti, according to the evidence of P. W. 8 Adiveppa Sannagodachappa Hanamappanavar, in para 11 of his evidence, there are 100 to 150 persons in Hulakoti who would vote according to G. R. Hiregoudar's tellings. The total is 65 (from Binkadakatti; plus 100 or 150 votes from Hulakoti and some Harijan votes making a total of about 220 votes secured by the Respondent No. 1 in those two villages approximately.

145. The tea shop of P. W. 7 Basappa Shantagiri is on the road side near the Polling Station and situated hardly a furlong from the Polling Station and that tea shop is at a distance of about one and a half furlongs from the houses of the Petitioner. Absolutely no complaint had been made to the police or to anybody whomsoever about the alleged treating by the persons concerned and it is not even been published in any daily paper, particularly in 'Nagarika' daily paper which had strongly supported the Petitioner during the election and whose editor and proprietor P. W. 35 Hombali admittedly supported the Petitioner in his election.

146 The story of P W 7 Basappa Shantagiri, on the face of it is unbelievable, as R W 5 Hiregoudar was a Member elected by the Taluka Development Board and even now the President of the Congress Mandal. He knows about the election. Respondent No. 1 was a member of the Bombay Legislative Assembly and also he is a member of the Mysore Legislative Assembly. So, he was an M L A in former periods. It is highly improbable that such people would as P W 7 Basappa Shantagiri to keep account in the name of Hiregoudar for the Respondent No. 1 and thereby create evidence against themselves knowing fully well that giving tea to voters on the polling day is an offence. According to P W 7, it is they (Respondent No. 1 and R W 5) who asked him to keep account in this book P W 7, had not even kept the account of the Respondent No 1 and R W 5 in a separate slip of paper, as P W 7 had done in the case of Ex X in that book in a separate paper. It is

strange that even after the money was paid by Hiregoudar, the account was allowed to remain in the account book of P W 7 which is a fact opposed to the normal course of human nature All these circumstances are most un natural and most improbable

147 The account book Ex 387 is very suspicious and page 96 of that book is alleged to have been written in the hand of P W 7. The election petition and the evidence of the Petitioner refer to it only to the transaction dated 22nd February 1962 (the polling day), whereas, the account book produced before the Tribunal and the relevant entries therein at Ex 387-A refer to the transaction of three dates, namely, 20th, 21st and 22nd February 1962. There are blank pages in that account book

148 On a perusal of the entries at Ex 387-A at page 96 of the account book Ex 387, the handwriting in that page can be seen to be deliberately written for the purposes of this case, with the same pencil and this difference can be seen near the other entries in that book both in the pages before and after the relevant entries The name of Govindagouda Hiregoudar for K P Gadag has been conspicuously mentioned on the top of the page of that book, where such significance is not shown to other customers in that book. The account book is suspicious and the relevant entries Ex 387-A appear to be a clear concoction and fabrication I cannot believe that account book and the relevant entries at Ex 387-A.

149. P. W. 11 is a henchman of the Petitioner and the Petitioner P. W. 56 Martandappa Mulimani and Neelappa Karur are friends. P. W. 11 admits that he acts according to the wishes of Neelappa Karur. Circumstances in the evidence show that P. W. 11 poses himself to be the Respondent No.1's man, but his evidence shows that P. W. 11 is virtually the Petitioner 's man and the evidence of P. W. 11 is analogous to that of an accomplice and he is therefore untrustworthy of credit unless there are other independent circumstances by way of corroboration. The other corroborative evidence appear to be not only tainted, but highly interested and unreliable. The other witnesses examined on this point, all appear to be partisans and interested witnesses and the evidence adduced as a whole on this point, there is a touch of artificiality and resemblance of exaggeration. I am not at all satishfied and convinced with the evidence of the Petitioner and his witnesses on this point. I believe the Respondent and his witnesses on this point.

150. For the reasons stated above, I hold that the Petitioner has failed to prove the allegations mentioned in para 5 (*a*) (*v*) of the petition.

151. The next allegation is contained in para 5 (*a*) (*vi*) of the petition.

152. The allegation in para 5 (*a*) (*vi*) of the petition is that on 22nd February 1962, voters of Ward No. XI within the area of Gadag-Betgeri

Municipality, were treated to tea and refreshments in the tea shop of Ningappa Patted, by Sri Vithaladas Amichand, the canvassing and the polling agent of the Respondent No. 1 and the bid of Rs. 162 was footed by the Respondent No. 1 on 23rd February 1962.

153 The Respondent No 1 has stated in para 19 of his written statement Ex.36 that the allegations in para 5 (*a*) (*vi*) of the petition are all false and denied and the treating alleged therein is denied. The allegation that the voters of Ward No. XI within the area of Gadag-Betgeri Municipality were treated with tea and refreshments in the tea shop of Nirgappa Patted is false. That Sri Vithaladas Amichand was not the canvassing agent of this Respondent, but he was only a polling agent of his and whose duties were restricted to watching the interest of this Respondent and it is false to say that this Respondent footed the bill as alleged therein

154 The above allegation is spoken to by the Petitioner, P W 12, P W 26, P W 27, P W 43, P W 61 and the Respondent No 1. The document referred to is the account book Ex 401 and the relevant entry therein is Ex 401-A

155 The Petitioner has given evidence that Ningappa Patted is running a tea shop at Betgeri in the XI ward in whose tea shop, Vithaldas Amichand, the canvassing agent of the Respondent No. 1, had kept a Khata for the expenses in curred for tea given to voters on behalf of the Respondent No 1 on 22nd February 1962 and the expenses incurred were Rs. 162 which was paid by the Respondent No.1. He has also given evidence that there were two polling stations near the shop of Ningappa Patted which would be about 400 to 500 paces away from the tea shop and his election office was one furlong away from that tea shop. He has further deposed that one Giddappa Abbigeri told him about it and that he did not send for Ningappa nor did he enquire about it. The information was given to him about 6 or 7 days after the election

156 P W 12 Ningappa Patted of Betgeri has given evidence that about five days prior to the polling day, the Respondent No 1 and Vithaldas Amichand had called him to the house of Vithaldas Amichand and the Respondent No 1 asked him to supply kara and tea to about 700 or 800 voters during the election day and said that Vithaldas Amichand would give chits and he (P W 12) should supply as per the chits for so many chits for which P W 12 had agreed and that the account was entered in the name of Vithaldas Amichand of Betgeri and that account was for four days from 19th to 22nd February 1962. He has also given evidence that the voters came to his tea shop with chits from Amichand and he gave them tea as per chits and entered the same in his account book Ex 401 and the relevant entry is at Ex 401-A and the total for all the four days amounted to Rs. 162 and that on 23rd February 1962,

P 12 went with the chits and account book Ex. 401 to Vithaldas who had paid him Rs. 162'50 paise for which P. W 12 passed on a stamped receipt for that amount.

157 P W 26 Sivappa Fakkirappa Hodali of Narasapur (cartman) has given evidence that on the polling day about 30 or 35 persons took tea in the shop of P W 12 and after taking tea, they went to the Polling Station, voted and they came back to the village. P W 27 Irabhadrappa Malakajappa Halakatti another cartman has corroborated the evidence of P W 26 on this point.

158 P W 43 Raghappa Devarayappa Baratakke of Betageri has given evidence that he was sent for by Vithaldas Amichand and he (P W 43) was asked by Vithaldas to take 123 persons with a chit to the tea shop of P W 12, and accordingly, he took them and the chit, gave the chit to P W 12 and they took tea and were asked to vote for the Respondent No. 1, they were taken to the Polling Station and they voted.

159 P W 61 Giddappa Parappa Abbigeri of Betgeri has given evidence that on the next day after the polling day, he went to the shop of P W 12 at about 9-30 A M or 10-00 A M., and P W 12 Ningappa Patted was not in the tea shop then ; that after sometime, P W 12 came and P W 61 asked P W 12 a handloan of Rs. 200 for two or three days. P W 12 said that he had no money then, and that he would give the next morning for which P W 61 said that he needed the money very urgently as he had to pay someone and P W 12 said that he (P W 12), had Rs. 162-50 paise paid by Vithaldas Amichand for the charges of tea supplied in connection with the Respondent No 1 's election and P W 12 asked P W 61 to take the amount and paid him Rs 160 He has also given evidence that six or seven days after the election, he had informed the Petitioner about Rs. 162-50 paise having been paid by Vithaldas to P W 12. He has also given further evidence that he had supported the Petitioner in the election.

160. The Respondent No. 1 has given evidence that he had not treated the voters of Gadag-Betgeri to tea and no arrangements for tea were paid by him or on his behalf in the shop of P. W. 12 and that the accounts in respect of Ex. 401-A are false and fabricated. That P. W. 12 is deposing falsely, because he is an underling of the Municipal President, P. W. 34 Kanavi who is the friend of the Petitioner and who has supported the Petitioner in his election and that what P. W. 12 has stated that he and Vithaladas had made arrangements for giving tea to voters is false and what P. W. 26, P. W. 27, P. W. 43 and P. W. 61 have stated is also false.

161. It has been contended on behalf of the Petitioner that the Respondent No. 1 has nothing to say against Vithaladas Amichand and that he had falsely planked his canvassing agent P. W. 11 Budappa

Ramappa Tirlapur in this Petitioner, but even such attempt has not been made in the case of Vithaldas Amichand by the Respondent No. 1. It is admitted, he urged, that Vithaldas Amichand was the Polling Agent of the Respondent No. 1 and that though the Respondent No. 1 has cited Vithaldas Amichand as his witness in Sl. No. 7 in his list of witnesses Ex. 135, for reasons best known to the Respondent No. 1, Vithaldas Amichand has not been examined and the Respondent No. 1 has not examined any persons excepting himself, and his evidence is highly interested and unreliable. He has further urged that as against the solitary and interested evidence of the Respondent No. 1, the Petitioner has examined the above witnesses and has got exhibited the document Ex. 401-A from the account book of P. W. 12 and therefore, the Petitioner and his witnesses have proved the allegations made in para 5 (a) (vi) of the petition beyond all reasonable doubts.

162. P. W. 12 had no previous acquaintence with the Respondent No 1 and he is also not connected with Vithaldas Amichand except that he (P. W. 12) is a classmate of Vithaldas in the Primary School. P. W. 12 has absolutely no business connection. P. W. 12 says that he has no accounts prior to 14-2-1962 and that Ex. 401 is another man's account book and the other man was the brother of Bagodi Gulappa who is a Municipal Councillor in the Gadag Municipality. There was no khata of Vithaldas Amichand in the tea shop of P. W. 12 either before or after the election.

163. The entries in Ex. 401-A are from the 19th to the 22nd February 1962, whereas, the allegations of the Petitioner in the petition is only for 22-2-1962. In the petition, the allegation is that the Respondent No. 1 footed the bill. According to the evidence of P. W. 12, the Respondent No. 1 had given all the directions pertaining to the alleged treating. It is admitted that this page at Ex. 401-A was blank, when he wrote the entries. Only himself and his brother wrote the account book. There is no independent writing to connect either the Respondent No. 1 or Vithaldas Amichand with the entries. According to the evidence of P. W. 12, Vithaldas Amichand said, "Write big election" in. the presence of the Respondent No. 1.—such a thing is highly improbable They cannot create the evidence against themselves incriminating themselves by allowing P. W. 12 to write "big election" in Ex. 401-A, when they know that giving tea during the polling day to voters is an electoral offence. The evidence of chits is another improbability.—Vithaldas Amichand saw, according to this witness (P. W. 2; Ex. 401-A when the bill was paid and when the chits were returned.—P. W. 12 admits that Vithaldas Amichand had seen the entry in Ex. 401-A in which the words "big election" is mentioned and still Vithaldas allowed that "big election" to remain in that book. It is not written in that account book that a receipt was given by P. W. 12 to Vithaldas Amichand and P. W. 12 still states that a receipt was given to Vithaldas and nobody had been asked to produce that receipt.

164. P. W. 12 has no previous acquaintance of the Respondent No. 1 and as already mentioned before, P. W. 12 has also no connection with Vithaldas except that he was a classmate of his. Such a man was not likely to be entrusted for supplying tea to the voters near the polling station, on the polling day, by the Respondent No. 1 who knew that it was an offence, and who also knew that the Petitioner had his election office situated just one furlong away from that tea shop of P. W. 12, and that the Respondent No. 1 had to deal with the Petitioner and his friends. The story of P. W. 12 itself appears to be very improbable. Till the election petition was filed, no complaint was lodged to any Police Station or even publication by the Petitioner regarding the alleged treating either on the polling day or even upto the date of election petition.

165. The election petition refers only to the name of P. W. 12 Ningappa Patted. The Petitioner says and also P. W. 12 says that they had no talk with each other. The information, according to the Petitioner. was got from P. W. 61 Giddappa Parappa Abbigeri and that information was given within six or seven days after the election. If that were so, the name of Giddappa Abbigeri would have been mentioned in the petition. That has not been done.—P. W. 61 Giddappa Abbigeri admits in his evidence that he was supporting the Petitioner during the election, and the alleged informant himself is highly interested in the Petitioner and therefore, the information itself is unreliable and highly improbable.

166. The Petitioner says that he had made enquiries after the election but he did not ask P. W. 12 Ningappa Patted about the tea, etc. This is not probable. If the Petitioner had really made enquiries, Ningappa Patted would have been the first man to have been enquired.

167. The account book Ex. 401, originally belonged to Ningappa Bagodi and the brother of Ningappa Bagodi is Gulappa Bagodi w o is a Municipal Councillor of the Civic Board Party of which admittedly the Petitioner is t e C airman. (refer para 12 of the evidence of P W. 1 The account book itself is not maintained in the petition nor spoken t by the Petitioner in his evidence.

168. T e treating is restricte' in the election petition to the voters of Ward No. XI of the Gadag-Betgeri Municipality. Voters from Narasapur are not at all mentioned in the petition. T e Narasapur inci ents are mentioned at page 22 of t e election petition in para 5 (e) (ii) of t e petition. The incident of giving tea to t e Narasapur voters itself cannot be gone into, as it has not been specifically pleaded in the election petition at para 5 (a, (vi) and any amount of evidence cannot be a good substitute for want of necessary pleadings [1964 Mysore Law Journal, page 488 (1964 September issues)].

169. The contention that the Respondent No. 1 has examined himself and the Petitioner has examined so many witnesses on this point and therefore the version of the Petitioner should be accepted cannot be accepted by me, because the test of reliability and appreciation of evidence is not depended upon the number of witnesses examined. In the words of their Lordships of the Supreme Court of India, the evidence has to be weighed and not counted and it is the quality of the evidence that matters and not the quantity.

170. I am not at all convinced with the nature of the evidence adduced by the Petitioner and his witnesses on this point and I cannot accept the contention of the learned Advocate for the Petitioner made at the time of arguments on this point. I, therefore, reject the evidence on this point of the Petitioner and his witnesses as unreliable and untrue.

171. For the reasons stated above, I hold that the Petitioner has not brought home the guilt of the Respondent No. 1 for the charge made in para 5(*a*)(*vi*) of the petition.

172. The next allegation is contained in para 5(*a*)(*vii*) of the petition.

173. The allegation in para 5(*a*) (*vii*) of the petition is that in order to induce Muslim voters to vote for him, the Respondent No. 1 got (*a*) Mosque at Pendargalli, (*b*) Mosque at Settlement Colony and (*c*) Mosque at Bogargalli at Betgeri, fitted with the electricity, as a reward for the said votes. This was so done between 3rd February 1962 and 28th February 1962. That on or about 19th February 1962, the Respondent No. 1 and his canvassing agent, Haji Tajuddinsaheb Umachagi, promised by way of a reward of Rs. 550, for the reconstruction of a Masjid at Betgeri, near Ambabhavani Temple. This was so done to procure the muslim votes for the Respondent No. 1, and the muslim voters in that locaity were made to promise their votes for the Respondent No. 1. The amount so promised was paid on or about 6th April 1962.

174. The Respondent No. 1 has stated in para 20 of his written statement (Ex. 36) that the allegations in para 5(*a*) (*vii*) are all false and denied and that this Respondent got Mosques fitted with the electricity as a reward for voters as alleged therein is false. That Sri Haji Tajuddin saheb Umachagi was not the canvassing agent of this Respondent and this Respondent never promised any support of any sort to the Mosques, nor did he consent to any such promise being given by anybody during the election time.

175. The above allegation is spoken to by the Petitioner, P. W. 15, P. W. 20, P W. 47, P. W. 58, P. W. 34 and by the Respondent No. 1, R. W. 15, R. W. 28, R. W. 29 and R. W. 35, and the documents relied upon are the accounts and the receipt books produced with Ex. 783 by R. W. 28 and proved and exhibited by him.

176. The Petitioner has given evidence that during the election days, Mosques at Pendargalli, Bogargalli and the Settlement at Betgeri were electrified and that a Mosque near Ambabhavani Temple had fallen That the Respondent No. 1 and Haji Tajuddinsaheb Umachagi had promised Rs. 550 for the construction of that Mosque and that the Petitioner had heard that the amount was paid in April 1962. He has also deposed that the electrification of the above Mosques was done at the expense of the Respondent No. 1 and that these amounts were spent with the object that all muslims should vote for the Respondent No. 1 and that one Angadi told him about the electrification eight days after the election.

177. P.W. 15 Husensab Davalsab Annigeri of Betgeri has given evidence that there is a mosque known as Hire-Masuti near Ambabhavani Temple at Betgeri and that about three or four days before the election, there was a meeting of the muslims held there which he attended and in that meeting R.W. 29 Noorani, R.W. 35 Umachagi and the Respondent No. 1 attended. That the mosque had fallen and the elderly persons informed the Respondent No. 1 to construct the mosque building and R.W. 35 Umachagi said that he would get Rs. 550 for the construction and that would be done after the election and all the muslims agreed to it and that J. K. Annigeri, R.W. 29, R.W. 35, Annigeri Fakkirasab were the prominent Muslims present there. He has also given evidence that after the election, the opening ceremony of the construction was made by R W 35 Umachagi and the foundation was aid by the Respondent No. 1 in the first week of April and the Respondent No. 1 had paid Rs. 550 in the hands of R.W. 35 Umachagi.

178. P.W. 20 Chandappa Hanumappa Koravar of Gadag has given evidence that there is a mosque in the Settlement and his house is also in Settlement Gadag and that there were no electric lights for the mosque in the Settlement and that R.W. 29, R.W. 35 and the Respondent No. 1 had come to that mosque during the first week of February during the election and the Respondent No 1 and R W. 29 spoke something about the election and R.W. 29 said during his speech " say if you want anything and we shall give you help " and the muslim members said that there were no lights for that mosque since many days and that if they (meaning Respondent No. 1 and R.W. 29) secured lights for that mosque, they would vote for the Respondent No. 1 and the Respondent No. 1 said that he would secure the lights and he would do it the next day. P.W. 20 has given evidence that accordingly the lights were supplied.

179. P.W. 47 Veerappa Adiveppa Angadi of Gadag has given evidence that during the election days of 1962, the Respondent No. 1 told him that he (Respondent No. 1) had got done temporary electrification from Manavi Brothers for all the three mosques and that Manavi Brothers were demanding Rs. 1,300 for that work and the Respondent No. 1 asked

P. . 47 to go, see and tell the Respondent No. 1 what would be the proper amount to be paid for that work and accordingly P.W. 47, after seeing the said three mosques, told the Respondent No. 1 that there was no objection to pay Rs. 1,000. He has also given evidence that the temporary electrification period was one month and that the Respondent had said that the contract was for one month, and that seven or eight days after the election, P.W. 47 informed about that matter to the Petitioner.

180. P.W. 58 Jandisab Kasimsab Annigeri of Betgeri has given evidence that four days prior to the polling day, a committee was formed and it was requested on behalf of the committee that Rs. 550 should be given to Hiremasuti in Betgeri by the Respondent No. 1 to construct it and the Respondent No. 1 said that he would pay Rs. 550 at the time of the foundation stone ceremony and that after the election, the Respondent No. 1 paid Rs. 550 in the hands of R.W. 35 Umachagi. He has also given evidence that there had been installation of electric lights in the Bogargalli, Pendargalli and Settlement mosques, but he does not know personally about the Respondent No. 1 having installed the lights. He has given further evidence that about 5 or 6 days after the election, he met the Petitioner and told him about the above events.

181. The Respondent No. 1 has given evidence that he had not procured electric lights for any mosque at Gadag or at Betgeri and that there was a mosque near Ambabhavani Temple in Kurahattipeth. It had fallen now and it is being built ; the work is going on. He has given evidence that he has not given any subscription for the work of construction and that a meeting had been held for laying its foundation stone and that meeting was after the election ; he presided over that meeting, as he was invited for that function and R.W 35 Umachagi had laid the foundation stone and in the speech of R W 35 Umachagi, R.W. 35 promised a donation of Rs. 500. That what is deposed in the evidence that he (Respondent No. 1) paid or promised to pay on that day is false and what the witnesses P.W. 20, P.W 47, P.W.58 and other witnesses have stated is false. He has given further evidence that P.W. 20 Koravar Chandappa is a Municipal Councillor belonging to the Civic Board Party and as Municipal contracts were mostly given to P.W. 47 Angadi, P.W. 47 was under the obligation of the Civic Board Party when it was in majority and P.W. 58 Jandisab Annigeri is an underling of P.W. 34 Kanavi and a friend of the Petitioner.

182. R.W. 15 Bimappa Fakkirappa Chapparamani of Gadag who stays in Settlement in Betgeri, has given evidence that there is a mosque in the Settlement ; there was no meeting at all there except on the 19th, there was a meeting in the Settlement when Smt. Mahishi was called and that the Respondent No. 1 had attended that meeting, but the Respondent No. 1 did not speak in that meeting. He has given evidence that it is not true that electric lights were installed at that mosque during the election

and that there were no electric lights at all in that mosque. He has further deposed that P.W. 20 Chandappa Koravar and Shetteppa Ugargol were the leaders of those who supported the Petitioner from the Settlement and P.W. 20 is a Municipal Councillor belonging to the Civic Board Party and that he (R.W. 15) is also a Member of the Gadag Betgeri Municipality since 8 years.

183. R.W. 28 Husensab Gousasab Sirahatti of Gadag has given evidence that he stays in Betgeri and the Badi-Jamiya-Masjid Urf Hire-Masuti in Betgeri had fallen down about 40 or 50 years ago and it is now being built and it has come up to the roof which has yet to be put. That a conference had been called in connection with the construction of that mosque and they (meaning the people) had kept the opening ceremony on 5-4-1962 and thereafter, the construction was started. He has also deposed that in that meeting (5-4-1962), important persons were invited; there was a Persident and one to lay the foundation stone and the foundation stone was laid by R.W. 35 Umachagi who is a prominent person in the Muslim Community and the Respondent No. 1 presided over that meeting on that day, because the Respondent No. 1 was an M.L.A., a prominent, good and educated man.

184. R.W. 28 has also given evidence that, that mosque has accounts which are with him and he is one of the panchas of the mosque, that some five receipt books have been sent to villages for collection and he has produced the account book and the receipt books and he has written the account book as also others, also the receipt book; and all the five receipt books produced by him relate to that mosque. He has also evidence that donations had been given on the day the foundation stone was laid down as can be seen from the receipt book and R.W. 35 Umachagi had made a promise on that day that he would contribute Rs. 501 and they have not yet brought that amount from R.W. 35, as they can bring that amount at any time when necessary. He has also deposed that he had asked the Respondent No. 1 also on that day to contribute something and the Respondent No. 1 said that he would see about it, and that the Respondent No. 1 has not contributed anything till this day and that before the day of that meeting, nobody had asked the Respondent No. 1 to make any contribution towards that mosque, nor had the Respondent No. 1 promised to make any money and it is not true that R.W. 35 had secured on that day that amount from the Respondent No. 1 as alleged. He has given further evidence that there were in all ten receipt books. The remaining five have been taken outside and the donations from various persons have been entered as per the receipts in the account book Sl. No. 1 with Ex. 783 and that there is no amount received either from R.W. 35 or from the Respondent No. 1.

185. R.W. 29 Noorani of Gadag has given evidence that he respects the Respondent No. 1 as a friend and the Respondent No. 1 also respects

him in the same manner. That there was a cermony of laying the foundation stone of the mosque at Betgeri in the year 1962 which he had attended and in that function, R. W. 35 Umachagi laid the foundation stone and the Respondent No. 1 presided over that meeting and that R. W. 35 only promised a donation of Rs. 501 and the he does not remember about the Respondent No. 1 having given any donation.

186. R.W. 35 Haji Sayyad Tajuddin Umachagi of Gadag has given evidence that he had gone to Hire Masuti at Betgeri about one and a half months after the election of 1962, for laying the foundation stone there for which he was called, there was a meeting in which the Respondent No. 1 was the Chairman and on that occasion, he (R.W. 35) had offered to pay Rs. 501 to that masjid, but that amount has not been so far paid by him. He has also given evidence that the evidence of P.W. 15 Husen Sab to the effect that the Respondent No. 1 had made a donation of Rs. 500 on that occasion and that amount was paid on to his hands by the Respondent No. 1 is not true and the statement of P.W 15 that about three or four days before the date of that meeting at that masjid, he (R.W. 35), under took to get Rs 550 from the Respondent No. 1 for the re-construction of that mosque building is also not true.

187. It has been contended on behalf of the Petitioner that R.W. 28 is a witness who has been tutered to say things in favour of the Respondent No. 1 and since the accounts are written by many others, the accounts cannot be a proper account book. He has also urged that R.W. 28 is a lier, he is pre-disposed in favour of the Respondent No. 1, R.W. 29 and R.W. 35 and he has utterely given himself away in maintaining the account of the mosque and the chief consideration for R.W. 28 in supporting the Respondent No. 1 was that Rs. 6 which R.W. 28 was getting for several days from the Respondent No. 1 during his attendance before the Tribunal and that the evidence of R.W. 28 will show that he was not at all present in Betgeri during the election period, otherwise he must have noticed the procession which was so lavishly arranged during the election. He has also contended that the witnesses examined on behalf of the Petitioner are dis-interested, reliable and their evidence is true.

188. In para 5 (a) (vii) of the election petition, we have to mark the phrase "fitted with electricity." It is not stated in the petition that electricity was fitted temporarily. According to the petition, the Respondent No. 1 and R.W. 35 Umachagi together promised a sum of Rs. 550 for the construction of the Hiremasuti and the names P.W. 15 J. K. Annigeri, and P.W. 47 Angadi are not mentioned in the election petition.

189. The Petitioner has no personal knowledge of this allegation in view of his verification in the petition . The names of P. W. 47 and P.W. 58 which were not in the petition have been introduced as informants in evidence of the Petitioner. Instead of "fitting up" the expression "temporary" has been introduced by the Petitioner in his evidence.

190. P.W. 15 Husensab Davalsab Annigeri is interested in the Petitioner, because the dispensary where he is working as a Senior Compounder belongs to the Municipality and Jandagisab was the Senior Compounder in that dispensary before. It is the Municipality which appoints the Compounders as doctors and P.W. 15 is the Senior Compounder in that dispensary. Thus, P.W. 15 is a servant of the Municipality of which P.W. 34 Kanavi is the President and that Kanavi is a good friend and supporter of the Petitioner who is the Chairman of the Civic Board Party for the last many years and the President of the Municipality is elected by the Civic Board Party which was in majority. Being the servant of the Municipality, and being under the influence of P.W. 34 Kanavi, P.W. 15 naturally supports the Petitioner.

191. There is overwhelming evidence on record to show that with respect to the Hiremasuti function, R.W. 35 Umachagi had laid the foundation stone while the Respondent No. 1 presided over that meeting held in that connection. But P.W. 15 Husensab reverses that fact in his evidence and states that it was R.W. 35 who presided over the meeting and that the foundation stone was laid down by the Respondent No. 1 showing thereby that P.W. 15 had not at all attended that function. Further, the fact that accounts of the mosque and receipts are admitted by P.W. 15.

192. P.W. 20 Chandappa Koravar is not connected with the mosque in the Settlement in any way and he was not specially invited. He is a member of the Gadag-Betgeri Municipal Borough and he has always supported P W. 34 Kanavi in the Municipality except once as per his own evidence. He appears to be a partisan witness interested in the Petitioner, though he pretends to be an independent and dis-interested witness. P.W. 20 says that he has not supported either the Petitioner or the Respondent No. 1 and yet he says that he had told the Petitioner about the Respondent No. 1 having asked the police to collect the people when the Respondent No. 1 and Smt. Sarojini Mahishi had come to the Settlement and that he (P.W 20) had also told the Petitioner about the lights having been secured by the Respondent No. 1 for the mosque. The evidence of P.W. 20 appears to be tainted and his evidence has a colour of artificiality and he appears to be P.W 34 Kanavi's man and P.W. 34, is a supporter of the Petitioner.

193. P.W. 47 Veerappa Adiveppa Angadi pretends that he cannot remember matters pertaining to his own personal affairs, but he could remember the affairs of the others, particularly the affairs of the electri fication of the three mosques in all the details. He appears to be a-partisan witness and a hireling of P.W. 34. P.W 34 Kanavi himslef has given evidence that P.W. 47 was given contract for fixing mercury lights, tube lights at some places. The evidence of P.W. 47 is tainted and interested, and appears to be a tool in the hands of P.W. 34. So far as the electrification of the three mosques are concerned, his evidene cannot

be believed. If it was a fact that any light, permanent or temporary, were there, Manavi's account could have disclosed it. About the consumer's energy, having got produced the books before this Tribunal, the Petitioner has not even tried to get them proved, nor the Petitioner has called and examined the electric company as his witness. The endorsement on Ex. 273 shows that there was no new electric installation at all nor any labour employed in the months of January and February 1962 in Gadag-Betgeri.

194. P.W. 58 Jandisab Kashimsab Annigeri is another partisan witness. This is the person who was the Senior Compounder in the Ayurvedic Dispensary belonging to the Municipality and who has been promoted as a doctor by the municipality, and P.W. 15 Husensab Annigeri also spoken to in his evidence about this matter. P.W. 58 appears to be another hireling and henchman of P.W. 34 Kanavi and the Petitioner. P.W. 58 admits that P.W. 15 is his brother and he meets him (P.W. 15). He admits that he attended the tribunal previously in connection with this case and still P.W. 58 pretends that he does not know his own brother P.W. 15 having been examined in this case and that he (P.W. 58) had not even asked his brother P.W. 15 till the evidence of P.W. 58 was recorded by this tribunal why P.W. 15 had been called and what evidence P.W. 15 gave although, P.W. 15 apart from being his brother, P.W. 15 is also a Compounder working in the same dispensary. Admittedly, P.W. 58 had not attended any meeting of the mosques before and he does not even know whether this mosque has its own account ; he does not know who is the Mulla of that mosque and Hiremasuti is not in his lane where he resides. P.W. 58 has deposed that he had gone to the Remand Home for examining the students and that the Petitioner is the Chairman of the committee of which P.W. 58 is also a member, and so, P.W. 58 and the Petitioner are also co-worker in that committee and naturally, P W 58 is supporting the Petitioner.

195. The evidence of the witnesses examined on behalf of the Petitioner have been shown by me as interested and they all appear to be chance witnesses or made to order witnesses, in addition to they being partisan witnesses. I am not at all convinced with the eividence and the varasity of these witnesses. The enquiry in an election petition being a quasi-criminal in character, it is the duty of the Petitioner to stand or fall on the strength of his own witnesses and he cannot rely upon the weakness of the other side. The evidence adduced on this point on behalf of the Petitioner is interested, unreliable and therefore cannot be accepted. The evidence of the Respondent No. 1 and his witnesses on this point show that the above allegations of the Petitioner are not only not proved, but those allegations themselves are baseless and false. The endorsement of the manager of Manavi Brothers clearly shows that there were no electric connections given to the mosques for the months of January and February by that firm. The allegation of the alleged sum given to

Hiremasuti by the Respondent No. 1 is also not been proved, because the allegation and the evidence on that behalf appear to be utterly baseless.

196. For the reasons stated above, I hold that the Petitioner has failed to prove the allegations mentioned in para 5 (a) (vii) of the petition.

197. The next allegation is in para 5 (a) (viii) of the petition.

198. The allegation in para 5 (a) (viii) of the petition is that on behalf of Dharmada Mallappajana Seva Sangeeta Nataka Mandal of Kanaginahal, one Channappa Mariyappa Gadag and Shankarappa Gulappa Kollari received an amount of Rs. 200 as an inducement and reward for canvassing and getting the votes of their actors, their relations and friends for the Respondent No. 1. They staged their drama in February 1962 and got it inaugurated by the Respondent No. 1 and promised their votes and also made an appeal to the audience to vote for the Respondent No. 1.

199. The Respondent No. 1 has stated in para 21 of his written statement Ex. 36 that the allegations in para 5 (a) (viii) of the petition are all false and denied and that the allegation that one Channappa Mariyappa Gadag and Shankarappa Gulappa Kollari had received the amount of Rs. 200 from the Respondent No. 1 is false. That is true that this Respondent inaugurated the drama, but the inauguration has nothing to do with any canvassing and this Respondent never referred to the election there.

200. The above allegation is spoken to by the Petitioner, P. W. 13, P. W. 44, and by the Respondent No. 1, R. W. 6 and R. W. 24 and the relevant documents relied upon are Ex. 604 and Ex. 427.

201. The Petitioner has given evidence that Channappa Gadag and Shankarappa Kallahalli were the canvassing agents of the Respondent No. 1 and that they are amongst the organisers of the Dharmada Mallappajjana Seva Sangeeta Natya Mandali and that the Respondent No. 1 had paid a sum of Rs. 200 for the inauguration of the drama at the time of inauguration into the hands of Shankarappa Kallahalli and Channappa Gadag so that all the persons of that dramatic company should vote for the Respondent No. 1, work for and canvass for the Respondent No. 1. He has also given evidence that the Respondent No. 1 had requested the audience with folded hands that they should help him in his election and that the members of the dramatic company promised on behalf of all that they would help the Respondent No. 1. He has further deposed that, that information was given to him by Adiveppa Katarki about three or four days after the drama.

202. P. W. 13 Adiveppa Govindappa Katarki of Harlapur has given evidence that he had attended the drama of the dramatic company on 5-2-1962 at Kanaginahal and the title of that drama is " Marriage

without consent" and the Respondent No. 1 had performed the opening ceremony of that drama and that Mallappajja was the president who presided over that function. That the Respondent No. 2 (namely R. W. 24) also attended that drama and that during the course of the speech, the Respondent No. 1 said that he had stood for the election and that all should vote for him with relative and friends and the Respondent No. 1 had also announced that he had given help of Rs. 200 to that company. He has also given evidence that Channappa Gadag took that amount of Rs. 200 from the Respondent No. 1 and he (Channappa Gadag) said during the course of his speech that the Respondent No. 1 had given to the company a sum of Rs. 200 and that they should vote for him with relatives and friends and get him elected. He has further deposed that R. W. 24 Mulgund had also made a similar speech on that occasion and that 700 to 800 persons had assembled to witness that drama and that the amount of Rs. 200 was given openly in the presence of the whole audience and it was after this amount of Rs. 200 was given, the Respondent No. 1 said that the votes should be given to him.

203. P. W. 44 Kenchappa Kallappa Bajappanavar of Kanaginahal has given evidence that on 5-2-1962, he attended the drama "Manasillada Madive" staged by the above said company at Kanaginahal and that the Respondent No. 1 had performed the opening ceremony and that the Respondent No. 1 called Channappa Gadag and Shankarappa Kallahalli and paid them a sum of Rs. 200 and said that the dramatic company people, their friends and all of them should help him and vote for him and that the amount was paid in the hands of Channappa Gadag, then the drama started after about half an hour and the Respondent No. 1 and some others left. He has also given evidence that R. W. 6 Neeralagi and R. W. 24. Mulgund were also present then and that the amount of Rs 200 (in currency notes) were not held out, but given quietly in the hands of Channappa and Channappa and Shankarappa Kallahalli did not take any part in that drama.

204 The Respondent No. 1 has given evidence that he had been invited to the drama mentioned above and he made the inaugural address, but he did not utter a word there about the election and he did not give any money to them and what P W. 13 and P. W. 44 have stated above and his having paid money there and made appeal for votes is false. He has given further evidence that he does not know who was Shankarappa Kallahalli and therefore there is no question of his having a talk with him. He admits that he, R. W. 24 Mulgund and Totappa Narayanappa had gone there for the said function.

205. R. W. 6 Gurusiddappa Ningappa Neeralagi of Kanaginahal has given evidence that the Respondent No. 1 spoke nothing about the election during his speech there and that the Respondent No. 1 did not give any money to that dramatic company on that day. R. W. 24 has given corrobarative evidence on this point corroborating the evidence of Respondent No. 1 and R. W. 6.

206. It has been contended on behalf of the Petitioner that the performance of the drama is accepted, the invitation is accepted and that the Respondent had made an open speech on that occasion is accepted, and the date of the drama 5-2-1962 is also accepted by the Respondent No. 1 and that when a candidate, in a thick of an election fight went to a village, the natural course of things would be to canvass for votes in that village and it cannot be said that on that occasion, the Respondent No. 1 did not canvass in that village and if the Respondent No. 1 had not asked for votes on that occasion in that village, his motive would be nothing less than corrupt, and R. W. 6 is interested in the Respondent No. 1, because there was a no confidence motion against R. W. 6 who is admittedly the Chairman of the Village Panchayat Committee at Kanaginahal and who was the Sarapanch in the Taluka Development Board and that the President of the T.D. B. is R. W. 24 Mulgund and the Respondent No. 1 is the *Ex-officio* member of the T. D. B. and the sitting M. L. A. and therefore the Respondent No. 1 and R. W 24 had mutually promised to help R. W. 6 with respect to the no confidence motion and hence, R. W. 6 has given false evidence in favour of the Respondent No. 1.

207. On a perusal of the petition on this, point it will be seen that excepting the two persons Channappa Mariyappa Gadag and Shankarappa Gulappa Kallahalli, the names of no other persons is mentioned in the petition. The name of Channappa Gadag is cited in the list of Petitioner's witnesses, Ex. 111, as witness No. 208. But he has not been examined by the Petitioner and the other person, namely, Shankarappa Gulappa Kallahalli is neither cited nor examined by the Petitioner and absolutely no convincing reason is forthcoming why these two important Witnesses have not been examined. The Petitioner has not examined even Mallappajja who was said to have presided over that function and who is alive and is available. The Petitioner has no personal knowledge of this allegation in view of his verification in the petition.

208. There is only one witness P. W. 44 examined from Kanaginahal on this point by the Petitioner. P. W. 44 is not a leader and he is not connected with that dramatic company in any way. P. W. 13 examined on this point by the Petitioner is from another village and both these witnesses appear to be interested in the Petitioner. There were two polling stations at Kanaginahal village. In the polling station No. 4, the Petitioner had secured 199 votes and the Respondent No. 1-251 votes; in the other polling station No. 5, the Petitioner had secured 127 votes and the Respondent No. 1 had secured 189 votes, thus making a total of 326 votes in favour of the Petitioner and 444 votes in favour of the Respondent No. 1. That shows that there was keen contest between the Petitioner and the Respondent No. 1 in the election and the question of bribing appears to be far fetched and remote.

209. The most important witnesses mentioned in the petition have not been examined by the Petitioner on this point and the evidence led

in through the witnesses for the Petitioner on this point appear to be interested and unreliable, because their evidence is esdcrepent and artificial. I cannot accept the evidence of these witnt sfs as true and I cannot accept the contention of the learned advocaeiəsor the Petitioner on this point.

210. Therefore, I hold that the Petitioner has failed to prove the allegations mentioned in para 5 (a) (viii) of the petition.

211. The next allegation is contained in para 5 (a) (ix) of the petition.

212. It is alleged in para 5 (a) (ix) of the petition that on 22-2-1962, at Binkadakatti, Sri Budappa Ramappa Tirlapur, the canvassing agent of the Respondent No. 1, paid on behalf of the Respondent No. 1, Rs. 50 as hired charges for ten carts of Binkadakatti in which voters of Binkadakatti were brought to Hulakoti for voting on the polling day and Binkadakatti is hardly two and a half miles from Hulakoti, the hire charges of Rs. 5 was only a rouse for purchasing the votes of the cartsmen, the members of their family and their relations and these austentatious cartsmen of Binkadakatti are (1) Marigouda Ranganagouda Rangappa navar, (2) Ranganagouda Venkanagouda Timmanagoudar, (3) Goudappa Marigouda, Rangappanavar, (4) Rangappa Ramappa Rangappanavar, (5) Venkappa Hanumappa Govannavar, (6) Bimanagouda Ramanagouda Kolli, (7) Ramappa Hanumappa Sulaganjikoppa, (8) Chandrappa Yellappa Kariyappanavar, (9) Venkanagouda Ranganagouda Timmanagoudar and (10) Kenchanagouda Tirakappa Agasanakoppa.

213. The Respondent No. 1 has stated in para 22 of his written statement Ex. 36 that the allegations in para 5 (a) (ix) of the petition are all false and denied and that Sri Budappa Ramappa Tirlapur was not the canvassing agent of this Respondent, and that he never paid the hire charges as alleged on behalf of the Respondent and that Sri Budappa and the cartman named in the petition are all supporters of the Petitioner and their names seem to have been introduced with some ulterior motive.

214. This is spoken to by the Petitioner, P. W 2, P. W. 11, P. W. 33, P. W. 37, P W. 56, P. W. 63 and the Respondent No. 1, R. W. 2, R. W. 3, R. W. 5 and R. W. 19.

215. The Petitioner has given evidence that Budappa Ramappa Tirlapur of Binkadakatti had hired ten carts for the Respondent No. 1 and he was canvassing for the Respondent No. 1 and the voters were taken from Binkadakatti to Hulakoti and back in those carts and that Hulakoti was the polling station for Binkadakatti. He has also given evidence that P. W. 56 Martandappa Mulimani told him about it 8 or 10 days after the election.

216. P. W. 2 Udachappa Bharmappa Nimbanaik has given evidence that 8 or 10 carts with voters came from Binkadakatti to Hulakoti on the polling day and R. W. 5 Hiregoudar looked after those voters.

217. P. W. 11 Budappa Ramappa Tirlapur of Binkadakatti has given evidence that he had canvassed for the Respondent No. 1 at Binkadakatti during the election and that when the Respondent No. 1 had come to his village about 8 days prior to the election, on questioned by the Respondent No. 1, P. W. 11 said that Neelappa Karur was canvassing strongly for the Petitioner and that carts were to be taken and money was necessary and the Respondent No. 1 gave Rs. 100 to be given for hire charges for carts and to give it to some voters. He has also deposed that Rs. 5 were to be given both for hire and for votes being given by the family and that a sum of Rs. 2 is usually the cart hire for the journey from Binkadakatti to Hulakoti and back. He has also given evidence that accordingly, he had hired 10 cartsmen (the names of those cartsmen are mentioned in his evidence) and that he took the cartmen and the voters on the polling day. He had paid Rs. 50 to the ten cartsmen and for their family people sitting in those carts, spent Rs. 20 for wall·paintings and refunded the balance of Rs. 30 to the Respondent No. 1 the next day.

218. P. W. 33 Rangappa Ramappa Rangappanavar, P. W. 37 Kenchanagouda Tirakappa Agasanakoppa and P. W. 63 Ranganagouda Venkanagouda Timmanagoudar are the three cartsmen from Binkadakatti village examined on behalf of the Petitioner on this point and they have given evidence that P. W. 11 hired carts from them at the rate of Rs. 5 per cart and that on the polling day, they had gone to the polling station at Hulakoti with the voters and returned to their village in the same carts.

219. P. W. 56 Martandappa Mulimani of Binkadakatti has given evidence that on the polling day he was going on bicycle from Binkadakatti to Hulakoti and near Pandappa's land, he saw ten carts of Binkadakatti and he asked one of the cartsmen how he they had come so soon and the cartman Rangappa said that the previous day, P. W. 11 had hired carts and he had paid Rs. 5 for the hire and for taking his family people and others in the cart and for that, they had to go early to give voters. P. W. 56 has also deposed that there were 100 persons in those ten carts and that he told about this matter to the Petitioner about 8 or 10 days after the election.

220. The Respondent No. 1 has given evidence that he had not made any arrangements either himself or through Hiregoudar to bring voters by conveyance from Binkadakatti to Hulakoti and that P. W. 2, P. W. 11, P. W. 33, P. W. 37 and P. W. 63 have deposed falsely and that leaving aside P. W. 6 Martandappa Mulimani,the other witnesses referred to above are all underlings of the Petitioner and that P. W. 56 Martandappa is a friend of the Petitioner.

221. R. W. 2 Basavaraddi Budappa Tirlapur of Binkadakatti has given evidence that the Tirlapur family members were staunch congressmen except the family of Budappa Ramappa Tirlapur (P. W. 11) and that P. W. 11 and his father were not been in the congress and that P. W. 56 Martandappa Mulimani is thick with the Petitioner and that the Petitioner, P. W. 56 Martandappa Mulimani and Neelappa Karur worked very much against the congress candidate, R. W. 5 Hiregoudar, and R. W. 5 Hiregoudar was defeated in the T. D. B. election of 1960 and that Venkaraddi Hulakoti, Shankaragouda, Hanumappa Dasar of Binkadakatti were the candidates opposing the congress then and that the said Hanumappa Dasar was proposed by P. W. 11 Budappa Ramappa Tirlapur against the congress candidate in that T. D. B. election of 1960.

222. R. W. 3 Devaraddeppa Govindaraddy Tirlapur of Binkadakatti is a member of the congress since 1921, he was sentenced in 1930, 1932, 1941 during the congress movement and he was a detenu in 1942-43 and a member of the Mandal Congress. He is also a resident of Binkadakatti. He has given evidence that P. W. 11 has no connection with the congress and P. W. 11 has nothing to do with the congress and that except P. W 11, the other members of Tirlapur family are faithful to the congress and that P. W.. 11 acts according to what P W. 56 Martandappa Mulimani, Neelappa Karur and the Petitioner say, and that P. W. 56 is that Chairman of the Village Panchayat of Binkadakatti of which P. W. 11 is a member. He has also given evidence that P. W. 56 and the Petitioner belong to one group and they are opposed to the congress since 1960 and that P. W. 11, P W. 33, P. W. 37 and P. W. 67 act according to what P. W. 56 Mulimani and Neelappa Karur say.

223. R. W. 5 Hiregoudar has given evidence that P. W. 11 is not on good terms with him and that P. W. 11 had worked against him along with the Petitioner and his group in the T. D. B. election of 1960 in which he (R. W. 5) was a congress candidate. He also corroborates the evidence of the other witness on this point.

224. The name of P. W. 56 Martandappa Mulimani is not mentioned in the petition. If P. W. 56 had told the Petitioner about 8 or 10 days after the election, then, the name of Mulimani would certainly have been mentioned in the petition just as the names of the ten cartmen iare mentioned. The non-mention of the name of P. W. 56 in the petiton weakens and falsifies the testimony of the Petitioner on this point.

225. If it is accepted that P. W. 11 Budappa Ramappa Tirlapur is not the Respondent No. 1's man, but he is a supporter of the Petitioner and a partisan of P. W. 56 Martandappa Mulimani and Neelappa Karur in Binkadakatti, it will be easy to see that P. W. 11 had not been asked by the Respondent No. 1 to canvass for him, to secure carts for him, to have his advertisement paintings made through him.

226. The evidence of R.W. 1, R.W. 2, R.W. 3, R.W. 5 and R.W. 19 all show that P.W. 11 is not with the other Tirlapur families in supporting the congress and that P.W. 11 is a supporter of the Petitioner in his election and even before the election. The fact that P.W. 11 has been named by the Petitioner in the petition and the fact that P.W. 11 has sworn in support of the Petitioner on several points shows clearly that P.W. 11 is a Petitioners man and not the Respondent No. 1's man. P.W. 11 pretends that he does not know whether the Petitioner has resigned from the Congress, that he does not remember what party had stood for the election, and that the relation between Budappa Tirakappa Tirlapur and Devaraddeppa Tirlapur also is not known to P.W. 11. He also says that the Petitioner and Budappa Tirakappa Tirlapur and Devaraddeppa Tirlapur are on good terms and that there is some difference between them and the Respondent No. 1 and therefore, the Respondent No. 1 mostly came to their village came to him and not to the house of Budappa Tirakappa and Devaraddeppa. P.W. 11 says that he has not paid the subscription of the congress this year and last year, he had paid that subscription and that too in the hands of Neelappa Karur who was a strong supporter of the Petitioner during the last election.

227. P.W. 11 has given evidence that he does not know whether P.W. 56 Mulimani and the Petitioner are friends, though P.W. 11 says that P.W. 56 has been elected the Chairman of the Village Panchayat unanimously of which P.W. 11 himself is a member . There are enough materials on record to show that P.W. 11 was in fact the Petitioner's man and he belongs to the Petitioner's group, supporting the Petitioner's group from 1960 that is, ever since the T.D.B. election of 1960 in which P.W. 11 had worked against the congress and its candidates in the T.D.B. election by proposing the name of Hanumappa Dasar, a candidate who was opposing the congress in that election and the nomination paper produced in this case is permitted to be exhibited as it is a public document under Section 74 of the Indian Evidence Act. That nomination paper of 1960 shows that P.W. 11 had in fact proposed a non-congress candidates against the congress candidate. The fact that P.W. 11 had proposed Hanumappa Dasar against the congress in the T.D.B. election of 1960 and the fact that P.W. 11 was working against the congress and against the congress candidates in the T.D.B. election, if not disputed, at any rate has not been seriously challenged by P.W. 11. With all the above background, P.W. 11 pretends that he is a congress man and that he supported the Respondent No. 1 during the last election. The evidence of P.W. 11, if closely scrutinised, from the mouths of various witnesses by comparing their evidence, will clearly point to the inference and conclusion that there is no relationship between P.W. 11 and the Respondent No. 1 in connection with the election of 1962. The four documents produced with Ex. 679, namely, the public documents relating to the nomination paper, etc., will show that P.W. 11 is not only on enmical terms with R.W. 5 Hiregoudar, but also he was on enmical terms against the congress party and consequently, against the congress candidate, including the Respondent No. 1. P.W. 11

being a congress man, he had proposed Hanumappa Dasar, a candidate who stood against the congress in the T.D.B. election of 1960. That itself shows that P.W. 11 was not the Respondent No. 1's man and there is enough and more materials on record that the Petitioner, P.W. 56 Martandappa Mulimani and Neelappa Karur and P.W. 11 worked against the congress candidate in the T.D.B. election of 1960 and defeated the congress candidate in that election as per the evidence of the Petitioner's witness Gudaraddeppa. All these circumstances among other circumstances on record, will show that P.W. 11 is the Petitioner's man and not the Respondent No. 1's man.

228. P.W. 11 has given evidence that a sum of Rs. 100 was given by the Respondent No. 1 to him for the hire charges for carts and to be given to some voters and P.W. 11 says that Rs. 5 were to be given both for hire and for the votes being given to voters and that a sum of Rs. 2 are the usually the cart hire for the journey from Binkadakatti to Hulakoti and back. Procuring or of hiring carts and offering or promising to pay a bribe is a corrupt practice under section 123 of the R.P. Act, because Section 123 relates to corrupt practice of hiring or procuring vehicles under Section 123 (5) of the R.P. Act, and also bribery under Section 123 (1) of the R.P. Act.

229. P.W. 11, by his own statement, is a guilty associate or partner in committing the alleged crime of corrupt practices and he, in some way or other, was connected with the offence of procuring or hiring the vehicles and bribery and he is connected with the offence of corrupt practice and he makes admissions of facts showing that he had a conscious hand in the crime of corrupt practice. He, according to his own statement, had given bribe and also hired carts with a view to induce the voters and the cartsmen to abstain from doing their duties to the detriment of other candidates in the election and therefore, P.W. 11 is equally guilty with the principle of offender or offenders if any, as such he is an accomplice within the meaning of Section 133 of the Indian Evidence Act and hence, the evidence of P.W. 11 is unworthy of credit, because he is an immoral person, has little sanctity for oath and his evidence would certainly require a greater amount corroboration than in the case of a person who is compelled by force of circumstances to give bribes to voters. The corroboration in this allegation, is given by the evidence of the three cartsman, P.W. 33, P.W. 37 and P.W. 63.

227. P.W. 33 Rangappa (a cartman) pretends he does not know that he has come a witness on behalf of the Petitioner in this case, although as per his own evidence, he knows the Petitioner for the past about 10 or 15 years. He did not meet the Petitioner from the polling day till his evidence was recorded nor anybody on his behalf and P.W. 33, according to him, had not told to any body about his deposition before. If that were so, it is very strange that how P.W. 33 happened to be a witness on behalf of the Petitioner on this point. He appears to be a henchman of the

Petitioner, his evidence appears to be artificial and hence, his evidence is untrustworthy and unreliable. P.W. 37 is another cartman examined on this point and he appears to be a cheap witness and according to the evidence of P.W. 37, even six annas for a vote is a big thing in the village and he appears to be another henchman of the Petitioner and a partisan witness. Further, P.W. 37 also appears to be a henchman of Neelappa Karur who is a friend and supporter of the Petitioner. The evidence of P.W. 37 is therefore unreliable and I cannot accept it. P.W. 63 Ranganagouda Timmanagouda is the third cartman examined by the Petitioner on this point. He also appears to be a henchman and an underling of the Petitioner, he is a cheap witness as he himself has given evidence that seven or eight members are there in his family and the income is not sufficient and P.W. 63 is the person who has given evidence that who would think improper to take money for voting and whatever given would be taken for giving votes. His evidence is also untrustworthy and unreliable and cannot be acted upon. On a close scrutiny of the evidence of these three cartsman of Binkadakatti, it will be seen that there is a touch of artificiality or artificial make up in their evidence, and they appear to be either chance witnesses or made to order witnesses. I reject their evidence therefore in this point.

228. Another corroborative evidence is that of P.W. 56 Martandappa Mulimani of Binkadakatti the name of whom has not been mentioned in the petition, but the Petitioner has introduced his name in his evidence as an informant about the hiring of carts. P.W. 56 and the Petitioner are friends and they are co-workers in public life. On a perusal of the evidence of P.W. 56, it will be seen that his evidence is highly tainted and interested and he is also one of the members of the group to which the Petitioner and P.W. 11 belong. The evidence of P.W. 56 is thus interested and therefore I reject his evidence also as unreliable and untrue.

229. Thus, P.W. 11 who is a star witness on this point has been shown as a Petitioner's man who has pretended to be the Respondent No. 1's man. P.W. 11 is an accomplice and his evidence is unworthy of credit without corroboration of independent circumstances. The so called corroborative evidence of the three cartsmen P.W. 33, P.W. 37 and P.W. 63 and that of P.W. 56 are shown to be untrustworthy and unreliable. Therefore, I reject the evidence of P.W. 11 also.

230. For the reasons stated above, I hold that the Petitioner has failed to prove the allegation mentioned in para 5 (*a*) (ix) of the petition.

231. The allegations contained in para 5 (*a*) (x) of the petition is not pressed by the Petitioner, for that allegation has been included in Issue No. 9. A memo to that effect has also been filed by the Petitioner's advocate.

232. The last allegation with respect to issue No. 1 is contained in para 5 (*a*) (xi) of the petition.

233. The allegation contained in para 5(*a*) (xi) of the petition is that on 21st February 1962, there was a procession of about 100 carts and quite a few pairs of bullocks besides those which were yoked to the carts and some 50 gas-lights at least. The carts and bullocks were hired as also the gas-lights. Heavy expenses were incurred by the Respondent No. 1 in a bid for votes under the guise of the pageant.

234. The Respondent No. 1 has stated in para 23 of his written statement Ex. 36, that the procession of carts and bullocks taken out at Gadag on 21st February 1962 was a spontaneous one arranged by the owners out of their admiration for the interest in the Congress, and the Respondent was not directly or indirectly connected with that procession. So, it is false to say that the procession was got up by the Respondent or that the expenses were paid by this Respondent.

235. This is spoken to by the Petitioner, P. W. 30, P. W. 40 and by the Respondent No. 1 and R. W. 11. The documents relied upon are Ex. 198 Navanagarika and Ex. 228 Nagarika.

236. The Petitioner has given evidence that in the issue of Navanagarika (Ex. 198) dated 22nd February 1962, the procession of 20th February 1962 is reported and the Petitioner makes a reference in para 15 and para 138 and 139 of his evidence about the procession, but he has no personal knowledge of the allegation made but the Petitioner says that others told him about it and that one S. B. Kariyappanavar told him about the procession. That Kariyappanavar has been examined by the Petitioner as P. W. 30, but P. W. 30 does not speak anything about this point as could be seen from his evidence.

237. P. W. 40 Parwatagouda Bharamagouda Umachagi of Gadag has given evidence that two days before the polling, there was a procession of horses, bulls and carts and that there were 10 to 12 horses, 100 to 101 carts and during the hours of the talk with the Respondent No. 1 and P. W. 40, the Respondent No. 1 said that the procession had cost him Rs. 500 to Rs. 600. P. W. 40 has also given evidence that he told about this to the Petitioner five or six days after the election.

238. The Respondent No. 1 has given evidence that there were two processions at Gadag on 21st February 1962 ; one procession was of the farmers and cartmen who were plying carts for hire and the second procession was of Akkana Balaga of Sahapur Peth in which there were women. The first procession was spontaneous and not at the bidding of anyone and that he had no connection with these processions.

239. R. W. 11 Neelakanthappa Basappa Kavali of Gadag, the Secretary of the Cartsmen Association, Gadag has given evidence that the procession mentioned in Ex. 198 was not arranged by anyone and they (cartmen), dalals, hamals, etc., took part spontaneously and they

did not take any money for taking part in the procession and that the decoration with garlands, etc., was done at the expense of the owners of the cartsmen themselves.

240. The evidence of the Petitioner is hearsay as he did not attend the procession. His verification to the petition itself will disclose that it was only information and not presonal knowledge.

241. The Petitioner says that P. W. 30 is the person who gave the information about the procession and P. W. 30 is silent about this point. P. W. 40 has a new story of the Respondent No. 1 coming to his shop and he (P. W. 40) is not named in the petition or by the Petitioner in his evidence. The evidence discloses that P. W. 40 has business connections with the Petitioner. The reports Ex. 198 (Navanagarika) Ex. 228 (Nagarika), that the procession was a propaganda in favour of the congress in which the persons concerned took part spontaneously also have to be taken into consideration. The allegation in the petition is that the Respondent No. 1 bore the expenses of the procession. There is absolutely no evidence on this point. R. W. 11 clearly states that no money was taken from the Respondent No. 1 and that it was a spontaneous thing arranged by the cartmen and others.

242. For the reasons stated above, I hold that the Petitioner has failed to prove the allegations mentioned in para 5(*a*) (xi) of the petition.

243. In the result, I hold that one of the allegations mentioned in Issue No. 1 has been established by the Petitioner.

Issue No. 2.—

"*Does the Petitioner prove the corrupt practices of undue influences as alleged in paragraphs* 4(*b*) *and* 5(*b*) (i), (ii), (iii), (iv), (v) *and* 5(*bb*) (i) *and* (ii) ?"

244. The above issue contains seven allegations of corrupt practices of under influence and I will now consider each one of the corrupt practices separately.

245. *The first allegation of corrupt practice is contained in para* 5(*b*) (i) *of the election petition.*

246. The allegations contained in paras 4(*b*) and 5(*b*) series are to be read together.

247. The allegations contained in para 5(*b*) (i) of the petition are as hereunder :—

Sri B. D. Jatti came all the way on 7th February 1962 from Bangalore to Campaigneer and canvass for Respondeent No. 1 and Miss Sarojini

Mahishi the candidate for the House of People from the Dharwar North Constituency and held a meeting at Betgeri, the same night at about 10 P.M. Though he happened to be the then Chief Minister of the Mysore State, he came in his personal and individual capacity and fulfilled the role of a canvassing agent for Respondent No. 1 and Miss. Sarojini Mahishi. It was a public meeting convened by the Taluka Congress Committee for canvassing and campaigneering for Respondent No. 1, who was all along present in the meeting and in which Sri Jatti exhorted the audience to vote for Respondent No. 1. Sri Jatti purposely started making false and personal allegations against this Petitioner, particularly with regard to the Agricultural Produce Market Committee and this Petitioner. Sri. F. M. Baradwad presided over the meeting and set the ball rolling by making uncalled for remarks. Sri Jatti said that merchants are being threatened with cancellation of licence, by persons who are Chairman, Secretary and members of the Agricultural Produce Market Committee. He said that because the Congress ticket was refused, one should not indulge in irreligiousness and immorality, and should not conduct oneself in a shameless and hooliganic way This had a reference to this Petitioner having applied to the Congress Party for a ticket which he was refused owing to the sectarian considerations, petty fogging and group-mindedness. Sri. Jatti said that if licences of merchants were cancelled, he had only to be telephoned or telegraphed and that he would immediately accord sanction to licences. He, therefore, converted the meeting into one which was being addressed by the Chief Minister as such and refererd to the invoking his powers as such. As Sri. Jatti made wilful mis-representations and was indulging in false and personal attaches against the Petitioner. At this juncture, the Petitioner sent a note to Sri. Jatti, seeing permission to speak to clear up the personal allegations levelled against him. When Sri Jatti was in no mood to accede to the request, the Petitioner left the meeting and went away. Sri Jatti went on tirading and making false allegations. The audience became restive. True to the pattern of inciting acute feelings in which Respondent No. 1 and his henchmen as also the henchmen of Miss. Mahishi were indulging and true to the patterns so set up particularly by Sri F. M. Baradwad, a prominent campaigneering and canvassing agent for Respondent No. 1 and Miss. Mahishi, of inciting feelings in meetings by getting things stage-Managed and true to the pattern of machinations by the merchants who are the natural enemies of the Agricultural Produce Market Committee, the throwing of a stone and a chappal were contrived and allegations were got engineered and a sort of a melodrama was sought to be enacted with Sri. Jatti as the principal dramatic person, in which righteous indignation was feigned to bring this Petitioner and his political associates into disrepute. Sri. Jatti has himself become guilty of the corrupt practice of undue influence, by holding forth assurance of the Agricultural Produce Market Committee licences for seeking votes for Respondent No. 1. He did not stop even here, but inspired the police to launch a complaint against this Petitioner and several others, got convenient Police Officers posted and made these

Police Officers to use undue i uence for Respondent No. 1 and against this Petitioner. He was the main person to it and a virulent personal attack of vilification and mis-representation was let loose against the Petitioner and the police were used for the electioneering of Respondent No. 1 and Miss. Mahishi, even to the extent of collecting audience for Miss. Mahishi's meetings in which she campaigneered and canvassed both for herself and Respondent No. 1. In fact, Respondent No. 1 and Miss. Mahishi were both instrumental in getting official pressure put on voters through Sri. Jatti. As the party in power in the Municipality was supporting the Petitioner, an enquiry was got started during the time when the election was in the swing just to discredit the supporters of the Petitioner. Sri. F. M. Baradwad even announced their avowed purpose of ending the Municipality. Sri. Jatti is, therefore, responsible for ending the full weight of his position as the then Chief Minister to the campaign of vilificat ionand undue influence and false statements and police machinations and participation for the electioneering of Respondent No. 1 and Miss. Mahishi.

248. The Respondent No. 1 has stated in para 24 of his written statement Ex. 36 that regarding the allegations in para 5 (*b*) (i) of the petition it is true that Sri B. D. Jatti, the then Chief Minister and Sri Baradwad who presided over at the meeting made speeches asking the people to support the congress by voting for its nominees. The support was intended for the congress candidates of whom this Respondent No. 1 happens to be one, and he was not instrumental in bringing about the meeting and had no hand in the conduct of the meeting. That he cannot be held responsible for the statement made by the speakers in the meeting and he, however, emphatically asserts that none of the speakers said or did anything wrong that would amount to corrupt practice. The speeches were on a high level and the allegation in the petition against Sri Jatti and against Sri Baradwad are as reckless as they are false and the Petitioner himself ceased to be a congress man, because he failed to get a ticket. He started reckless propaganda in support of his own candidature. Just as his speeches and writings contain false statements, this petition also contains highly false statements. Regarding the incident about the disturbance at the meeting, this Respondent does not want to go into the details as the matter is sub-judice and it may be clearly understood that this Respondent denies in to to all the allegations in that para.

249. The above allegations are spoken to by the Petitioner, P.W. 13, P.W. 18, P.W.19. P.W. 21, P.W. 34, P.W. 56, P W. 64 and the Respondent No. 1 and R.W. 13.

250. The petitioner has given evidence that Sri B. D. Jatti, the then Chief Minister of the State of Mysore, had come to Gadag on 7-2-1962 and then to Betgeri on the invitation of the Respondent No. 1 and the Taluka Congress Committee, there was a meeting held in Betgeri at 11 P.M. under the chairmanship of Sri F. M. Baradwad, who was canvassing for the

Respondent No. 1 and that Sri B. D. Jatti first praised the Respondent No. 1 in that meeting as having done good and also said that the Petitioner had applied for a congress ticket and to leave the congress was a shameless act on his part and vote should not be given out of the fear of the Petitioner and that if the Petitioner cancelled the licence, he (Sri Jatti) would give them the licence in his capacity as the Chief Minister, if he was intimated on phone and that all of them should vote for the Respondent No. 1. The Petitioner has also deposed that when that meeting was addressed by Sri Jatti, he (the petitioner) requested Sri. Jatti to allow the Petitioner to speak at that meeting and also gave a letter in that behalf and that Sri. Jatti was inclined to allow the Petitioner to speak, but the Respondent No. 1 told him not to allow the Petitioner and so, he was not allowed to speak, as Sri. Jatti asked the Petitioner to go out of the meeting. The Petitioner has also given evidence that thereafter, he went and slept in the adjoining house of one Vijayadas and he was hearing Sri. Jatti's saying that stones were hurled and that there was no reference a shoe having been thrown. He has given further evidence that on the pretext of this incident, a complaint had been got filed against him and 27 others by the Respondent No. 1 and many of them were the Petitioner's supporters in the election. That Sri. Jatti had gone to the house of the Respondent No. 1 immediately after the meeting.

251. The Petitioner has given further evidence that the majority of the party in the Municipality in Gadag was supporting the Petitioner and that he learnt that the instance of Sri Jatti, the Deputy Commissioner, suddenly informed the Municipality that he would come and inspect the Municipality and that information was given telegraphically and that the President of the Municipality and others met the Deputy Commissioner as it was unusual and that the petitioner had learnt that those persons were informed that nothing could be done that they might approach Sri Jatti in the matter, as the Deputy Commissioner was acting on the orders of his superiors and that the inspection was with aview to suppersede with the municipality. That by that statement of Sri Jatti, the Petitioner depose, that wrong opinion about the Petitioner was formed by the voters and gathered the impression that if they voted for the Respondent No. 1, they would get the favour of the Government and there was fear created among those who would vote for the Petitioner and support him.

252. The Petitioner has stated in his verified statement to the petition that para 5 (b) (i) of the election petition was true to his personal knowledge and that he has stated that Sri Jatti had come all the way from Bangalore to campaigneer and canvass for Respondent No. 1 and Miss Sarojini Mahishi who was a candidate for the House of People from the Dharwar-North Constituency.

253. P. W. 13 Adivappa Katarki has given evidence that he was present at Sri Jatti's meeting of 7-2-1962 which was presided over by Sri Baradwad and in which Sri Jatti spoke and said that if the Petitioner

harassed the merchant in anyway by cancelling their licences, if they (merchants) phoned to him at midnight or wire to him (Sri Jatti), he would arrange to see that they got the licence at once and that he said so not as Sri Jatti, but as the Chief Minister of the State of Mysore and that the statements of Sri Jatti had created a bad impression on the voters. He has also given evidencee that the Petitioner's election office was there about half a furlong from the place, where the said meeting was held and that he went to the Petitioner and told him what the Chief Minister was saying and his speech was creating a bad impression on the audience and asked the Petitioner to think over and that thereafter, the Petitioner went near the platform of Sri Jatti, gave a chit to Sri Jatti and that it appeared from the features of Sri Jatti that he was inclined to give permission to the Petitioner to speak, but the Respondent whispered something in the ears of Sri Jatti and Sri Jatti told the Petitioner not to speak on that platform and that he (the Petitioner) might have another platform to speak and thereafter, the Petitioner bowed to Sri Jatti agreeing with him and went to the house of Sri Vijayadas Punekar nearby. P. W. 13 has also given evidence that he was sitting in that Sri Jatti's meeting and that there was no chappal thrown in that meeting, there was not much disturbance in that meeting and it went on peacefully. He admits that what was reported in Ex. 218 (Navanagarika daily paper) about the meeting is correct and what is mentioned about the chappal in that paper is not true.

254. P. W. 13 Adiveppa, a resident of Harlapur village, has also given evidence that as he had some family work and as his brother stayed in Gadag, he (P. W. 13) had gone to Gadag on the day of Sri Jatti's meeting and that he had no interest in the election, either in the Petitioner or in the Respondent No. 1 and that although he was not interested as mentioned above, still he informed the Petitioner about the statement of Sri Jatti, as that appeared to him to be improper and left Gadag by 7-30 morning train the very next day. He has also given evidence that he did not know what the Respondent No. 1 whispered in the ear of Sri Jatti.

255. P. W. 18 Jeevanasa Kabade has corroborated the evidence of P. W. 13 and has further deposed that no chappal fell in that meeting and he was present in the meeting till it was over and that what is mentioned in the Navanagarika Ex. 218 about the incident of chappal is false and the rest of its content is correct. He has also given evidence that there was some disturbance in that meeting. Some traders had observed haratal on the next day, but he does not know about the traders having passed resolution at the meeting on the next day in condemnation of the conduct of the Petitioner. He has further deposed that when the Petitioner gave the chit to Sri Jatti, what the Respondent No. 1 whispered to him was in a manner which could not be heard. P. W. 18 is a Councillor in the Gadag Municipal Borough elected on behalf of the Civic Party

and he has also given evidence that he always voted on the side of Sri Kanavi (the President of the Municipality.)

256. P. W. 19 Tukaram is another Councillor of the Gadag Municipal Borough elected from the Civic Board Party of which the Petitioner is the Chairman. is He admits that he is a supporter of the Petitioner in the election. He speaks about the inspection of the Gadag Municipality.

257. P. W. 21 Nagappa Tukka has given evidence corroborating the evidence of P. W. 13 about that meeting and he further says that about 500 to 600 persons must have heard what the Respondent No. 1 had said to Sri Jatti when the Petitioner handed over the chit and the Respondent No. 1 stated that the Petitioner should not be allowed to speak in that meeting.

258. The above evidence is also corroborated by the evidence of P. W. 34 Kanavi, P. W. 56 Martandappa Mulimani, P. W. 64 Jayaramachar Malagi.

259. The Respondent No. 1 has given evidence that Sri Jatti had come to Gadag on 7–2–1962 and two meetings were held on that day, one at Gadag and another at Betgeri and Sri Jatti spoke in both the meetings. He has also given evidence that the congress had arranged both those meetings, he had no hand either in calling those meetings or in the conduct of those meetings and that Sri Jatti had stated that he had come there as a congress member and not as a Chief Minister and he (Sri Jatti) referred to in his speech to the licence of the A. P. M. C. and said that if their licences were cancelled improperly by the Chairman of the A. P. M. C., they (the licencees) should apply to the concerned authorities and the licence should be restored. He has also given evidence that he did not make any suggestion to Sri Jatti in respect of the chit given by the Petitioner and at the reply of Sri Jatti, the Petitioner and two or three followers of his approached the dias in a defiant mood and asserted that they wanted to give clarification and they should be given an opportunity and allowed to do so, and that created a good deal of disturbance in the meeting and the audience got up, stones and chappals also fell on the table, on the dias and the table was in front of Sri Jatti and the President. He has denied in his evidence the allegations of the Petitioner in the petition, and his evidence is corroborated by P. W. 13 Sivappa Kubasad who is a member of the M. P. C. C. and an M. L. C. elected on congress ticket.

260. In the election petition, it is not alleged that the Respondent No. 1 got Sri Jatti and that he had made him his canvassing agent. The allegation in para 5 (b) (i) of the petition shows that the meeting was convened by the Taluka Congress Committee and that the Respondent No. 1 and Smt. Sarojini Mahishi have been treated in the same footing as congress candidates. The petition does not state that the Respondent

No. 1 had any hand in calling that meeting or in the conduct of that meeting. On the basis of the verification of the Petitioner in the petition and also on a reading of the petition on this point, it can be noted that the Petitioner was present in that meeting from the very beginning of that meeting. It is not alleged in the petition that in that meeting, remarks were made by Sri Jatti either at the inducement, or with the connivance of the Respondent No. 1. Regarding the chit given by the Petitioner, it is alleged that when Sri Jatti was in no mood to accede to the Petitioner's request, the Petitioner left the meeting and went away. Throwing of stones and a chappal are indirectly admitted in the petition, though the petition states that those allegations were contrived and got engineered.

That in the petition, in making the police work, the Petitioner seems to blame Sri Jatti, it is alleged in the petition that Sri Jatti himself becomes guilty of corrupt practice of undue influence and it is nowhere alleged in the petition that these were got done at the instigation or with the consent or connivance of the Respondent No. 1. The allegation of the Petitioner in the petition that the merchants are the natural enemies of the A.P.M.C. goes a long way in supporting the statement that the merchants had complained to Sri Jatti.

261. There is a change in the stand taken by the Petitioner from what he has taken in the petition. The Petitioner's evidence that Sri Jatti had come to Gadag and Betgeri on 7-2-1962 at the instance of the Respondent No. 1 and that Sri Baradwad who presided over that meeting was canvassing for the Respondent No. 1 are improvements newly introduced in his evidence, though not pleaded. The allegation in the petition that Sri Baradwad presided over that meeting and set the ball rolling by making uncalled for remarks is falsified by the Petitioner's own witness P. W. 13 Adiveppa who has given evidence that Baradwad said that he was thankful for having made him the president for the meeting of that day and that he (Baradwad) did not say anything more. (Evidence of P W. 13 para 7).

262. Sri Jatti's meeting, according to the various reports of the dailies, and even according to the petition, was a public meeting convened by the Taluka Congress Committe and it was a propoganda meeting for the congress candidates, namely, the Respondent No. 1 and Smt. Sarojini Mahishi. According to the Petition, Sri Jatti had come to that meeting in his individual and personal capacity and that the meeting was a public meeting convened by the Taluka Congress Committee. The evidence is to the effect that Sri Jatti was invited by the Respondent No. 1. According to the petition, whatever Sri Jatti said in that meeting was of his own. The evidence is different from the petition. The petitioner cannot be made to say that Sri Jatti did anything or spoke anything at the instigation of the Respondent No. 1 or with the consent of the Respondent No. 1. Further, regarding the chit sent by the Petitioner to Sri Jatti, the petition is that "Sri Jatti was not in a mood to accede

to the request of the Petitioner," and the evidence led in by the Petitioner and his witnesses on this point is that Sri Jatti did not allow the Petitioner to speak at the instance of the Respondent No. 1. These portions of the evidence are a total departure from the stand taken in the petition. These particulars are not found in the pleadings and therefore, the above portions of the evidence cannot be gone into at all in view of the rulings of our own High Court in 1964 Mysore Law Journal 488 that any amount of evidence will not be a good substitute for want of proper pleadings.

293. Further, almost all the witnesses examined by the Petitioner on this point are all, in one way or the other, either directly or indirectly, connected with the petitioner and they appear to be partisan witnesses, because there appears to be a semblance of exaggeration and an element of artificiality in their evidence and their evidence is highly interested and discrepent and therefore unreliable.

294. There is a change of stand in the petition in this allegation from stage to stage, in the petition, there is nothing about the role of the Respondent No. 1 in that meeting, for the petition says that it was Sri Jatti who was not in a mood to accede to the Petitioner's request. In the news paper publication Ex. 218 of the issue of Nagarika, dated 9-2-1962 which was strongly supporting the Petitioner during the election, the report regarding the chit given by the Petitioner is that some unknown person (yaro) seem to have told Sri Jatti not to allow the Petitioner to speak on that occasion. The first stage is that the Respondent No. 1 whispered some thing to Sri Jatti and it could not be heard. Then, the next stage is that the Respondent No 1 whispered to Sri Jatti and also said loudly and so loudly that 500 to 600 persons could hear. The evidence on this point (refering to the Respondent No. 1 whispering) appears to be unreliable, because in Ex. 218 Nagarika and also in Ex. 225 Nagarika which are the earlier statements, do not mention anything about the Respondent No. 1's whisper, particularly when such an incident had not been published in the Nagarika daily, a paper which supported the cause of the Petitioner during the election, the natural inference would be that there was no whisper at all as alleged in the evidence and the same was an after thought engineered later by the Petitioner. The evidence that Sri Jatti came as a Chief Minister is sworn to only by two interested witnesses of the Petitioner and their evidence is contradictory to the allegations made in the petition.

295. As regards the A. P. M. C., (Agricultural Produce Marketing Committee), Sri Jatti had said that he would get the licence of merchants restored, if the licences were cancelled improperly and not that if they were cancelled on any account, (refer evidence of P. W. 13 para 8) and that the Petitioner was the Chairman of the A. P. M. C. and that if the Petitioner harassed the merchants and if the licences of those traders were cancelled, they should not be afraid of it and if any such thing happened, even at midnight, he would get the licence restored (evidence

of P. W. 18 para 2). Sri Jatti has also stated in that meeting that the Petitioner was the Chairman of the A. P. M. C. threatening the traders that he would cancel their licences in asking for votes. Sri Jatti said that as there was the Congress Government, nobody need be afraid and therefore, if the licences were cancelled, even if he was informed at midnight by telephone, he would set the matters right by getting back the licence (evidence of P. W. 34 para 2). From the above evidence, what could be gathered is that if licences of traders of the A. P. M. C. of which the Petitioner was the Chairman, were cancelled improperly, there are means of getting justice and relief and therefore, Sri Jatti reminded the voters not to be afraid of such threats and that the voters should think and vote. This view is also borne out by the publication made in Ex. 218 Nagarika, the paper that supported the Petitioner, and particularly the headlines of Sri Jatti's meeting appearing in Ex. 218 " voting is sacred, think and vote," are important. The pleading in the petition that the merchants are the natural enemies of the A. P. M. C. throws a flood of light that there was complaint by the merchants or at any rate misunderstandings between the A. P. M. C. and the traders and that the merchants had complained to Sri Jatti.

296. The fact that there was a disturbance in that meeting is clear from the various newspaper reports like Ex. 164 Deshavani, Ex. 186 Navanagarika, Ex. 218 Nagarika, particularly Ex. 218 Nagarika. That a chappal was thrown is admitted in the election petition and it is reported in the papers. That fact is also admitted by the Petitioner in his speech reported in the Nagarika paper Ex. 225. But, it is seen from the evidence of the Petitioner and his witnesses that the throwing of a chappal in that meeting is denied.

297. There was no allegation in the petition that the transfer of the Sub-Inspector was got done by the Respondent No. 1, so also the telephone by Sri Jatti. Telephoning by Sri Jatti was not a part of Sri Jatti's meeting at all. Sri Jatti was the then Chief Minister of the State of Mysore and he had to attend to his other duties and in that behalf, he might have telephoned that night. Further, no significance can be attached to that telephone talk of Sri Jatti that night, because the substance of the telephone message or talk is not placed before the tribunal.

298. There was a congress propaganda meeting that night, in which, Sri Jatti had made his speech in his individual and in his personal capacity in support of the Congress and asked the voters to exercise their votes freely without fear. There is nothing extraordinary in that meeting except the disturbance as has been reported in 16 E. L. R. 45, a leader of a political party is entitled to declare to the public the policy of the party and ask the electorate to vote for his party, without interfering with any electoral right and such declaration on his part would not amount to undue influence under Section 123 (2) of the R. P. Act. The fact that he happens to be a Minister or Chief Minister of the State would not de-

prive him of this right. Ministers can assist a candidate in his election. They can canvass as leaders of the Political Party for themselves and for other candidates set up for their party. If a Minister solicits votes and tries to pursuade the electors to vote for a candidate of his party and requests the voters not to vote for any other candidate or to remain neutral, he does not commit any corrupt practice. It is only, if he does something in the nature of that described in Section 123 (2) of the R. P. Act that he commits the corrupt practice of undue influence. While canvassing, it is not necessary that he should divest himself of the parapharnalia of his office, while so canvassing. He can attend election meetings in the State car flying the State flag and he can attend the election meetings in that car and can be accompanied by his orderlies. This will not amount to undue influence. (Triloksing *Vs.* Sivaraj Wati Nehru, 16 E. L. R. 234).

299. It is a fundamental principle of canvassing in an election, a candidate is entitled to make a propaganda about the achievement of his party and to publish the benefit conferred by this party in order to secure votes in his favour.

300. On a perusal of the evidence of the witnesses examined by the Petitioner on this point, it will be seen that they are in one way or the other, directly or indirectly connected with the Petitioner, and they are all highly interested and partisan witnesses and their evidence, taken as a whole, is thoroughly unsatisfactory, unreliable and unconvincing. I am not convinced with the evidence led in by the Petitioner and his witnesses on this point. I do not think that from the speech of Sri Jatti there is any interference with the free exercise of the electoral right or the electors within the meaning of Section 123 (2) of the R. P. Act.

301. For the reasons stated above, I hold that the Petitioner has failed to prove the allegations mentioned in para 5 (b) (i) of the petition.

302. *The next allegation is contained in para* 5 (b) (ii) *of the petition.*

303. The allegation contained in para 5 (b) (ii) of the petition is that at Kanaginahal, there was a Primary School Teacher, Sri B. S. Binnal who was approached by the Respondent No. 1 and his canvassing agent, Sri V. R. Mulgund, the President of the Taluka Development Board and he was asked by them to canvass and get votes for them at Kanaginahal. The said teacher refused to take any part in the election and he was threatened with the transfer out of the Taluka and he was reticent to get mixed up in electioneering politics, he was got transferred out of turn and one Sri Haralapur was posted at Kanaginahal instead and got him to canvass for the Respondent No. 1, Miss Mahishi and Sri C. S. Hulakoti, the Official Congress Candidate for the Mundargi Assembly Constituency.

304. The Respondent No. 1 has stated in para 25 of his written statement Ex. 36 that the allegations contained in para 5 (b) (ii) are false and mischievous and that Sri Binnal is a friend of the Petitioner and comes from Hulakoti and that complaints against him by the villagers were many. It is false to say that he was asked by this Respondent to canvass votes for him and that Sri Harlapur was posted at Kanaginahal so that he could canvass votes for this Respondent. It is learnt that the transfer and the appointment alleged were all after the election and further the later transfer of all the teachers in the school were with a view to improve the management of the school.

305. This is spoken to only by the petitioner and the Respondent No. 1 has examined himself and also examined R. W. 6 Gurusiddappa Niralagi and R. W. 24 Irappa Mulgund. The Petitioner had got produced with Ex. 48 some documents and also Ex. 236. Ex. 312 is a publication in the Nagarika daily dated 19-1-1962.

306. The Petitioner has given evidence that Sri B. S. Binnal (also known as Basappa *alias* Seshappa) was a Kannada Primary School Teacher at Kanaginahal and that the Respondent No. 2 Mulgund is the President of the Taluka Development Board, Gadag and that the Respondent No. 2 had asked the teachers to support the Respondent No. 1 in the election and the teachers including Sri. Binnal did not agree to support the Respondent No. 1 and that the Sarapanch said that Sri Binnal was responsible for all that and in the absence of Sri. Binnal, the others would come round and help the Respondent No. 1. He has also deposed that Sri. Binnal was threatened that if he did not help him in the election, he would be transferred outside the taluka and accordingly, he was transferred after the election out of the taluka and they had brought another man, Harlapur who had helped C. S. Hulakoti and that Harlapur had also helped Smt. Mahishi, the congress candidate for the Parliament.

307. The Petitioner has also given evidence that the date of transfer of Sri. Binnal was effected on 23rd March 1962 and that the teacher who was appointed at Kanaginahal was at Harti village in the months of January and February 1962 and that the transfer of Sri. Binnal took place after the election, and that the transfer had been by the educational authorities, as a result of the teachers quarrel with the people of that village (Kanaginahal).

308. The Respondent No. 1 has given evidence that the affairs of Kanaginahal school were in a state of mis-management since the year 1960 and that there were lot of complaints from the villagers that a teacher, Binnal by name, was not doing his work properly and that Binnal was transferred after the election from Kanaginahal and one Sri. Harlapur was appointed in his place. He has also deposed that the transfer of Sri. Binnal from Kanaginahal and Sri. Harlapur to Kanaginahal has nothing to do with the election.

309. The Respondent No. 1 has given further evidence that he had gone to Kanaginahal in December 1961 and he had made a telephone call to the Administrative Officer, District School Board, about the mismanagement of the school and to the Education Inspector at Dharwar and it had appeared in some papers that two persons from educational department had gone to that school in connection with the said mismanagement. That he (Respondent No. 1) had gone once to Kanaginahal on 8th January 1962, but he had not met any Educational Officer in connection with Sri. Binnal and the villagers had complained to him and Sri. Mulgund about the mal-administration of that school. He has also given evidence that Sri. Binnal was the underling of the Petitioner.

310. R. W. 6 Gurusiddappa Neeralagi, a resident of Kanaginahal and the Chairman of the V. P. C. has given evidence that he had sent the letter dated 3rd January 1962 (at page 25 with Ex. 42) which bears his signature and none of the villagers had told the Respondent No. 1 and Sri. Mulgund when they visited the school about Sri. Binnal and that he had also signed another letter at page 85 with Ex. 48. He has also given evidence that Sri. Binnal was transferred after the election. He admits that he had signed the letters at pages 47 and 58 produced with the Ex. 48.

311. R.W. 24 Veerappa Mulgund has given evidence that he and the Respondent No. 1 had gone to that school at Kanaginahal during the first week of January 1962 and that there was discard between the teachers and the relation between the teachers and the villagers were not cordial and he corroborates the evidence of the Respondent No. 1 on this point.

312. It is stated in para 5 (*b*) (ii) of the petition that the transfer of Sri Binnal took place during the election and that the Respondent No. 1 got the other teacher, Harlapur to canvass for the Respondent No. 1. Except the names of Sri Binnal and Harlapur, no other names nor dates are given in the petition. The dates of transfer of Binnal and Harlapur are also not given in the petition. The Petitioner has not chosen to examine witnesses on this point except examining himself.

313. The name of Sri. Binnal is given at Sl. No. 200 in the list of witnesses at Ex. 111. Sri. Binnal was summoned by the Petitioner and he was present before the Tribunal. There are takids as per Ex. 411 and Ex. 464 and other takids in that behalf. Still, Sri. Binnal was not examined by the Petitioner, and no reason has been given why he was not examined. The reasons could be inferred from the documents produced with Ex. 48 which were produced (and they are permitted to be exhibited) before the Tribunal by that time. On a perusal of the documents produced with Ex. 48, and from the visitors book of that school Ex. 236, it will be seen that the Administrative Officer had made a remark at page 9 of that visit book that the said school was attended and the local enquiry was made about the complaints against the teachers and it is dated 17-9-1960 ;

and at page 18 of Ex. 236, there is a remark that it was not known where Sri. Binnal had gone and that he was not in the School. At page 5 of Ex 48, there is a representation dated 2-11-1961 made by the villagers signed by hundred and one of them stating that Sri. Binnal used to come to the school once in two or three days and thereafter, he was coming once in a week and that he (Sri. Binnal) was mainly responsible for the deterioral of that school and that action should be taken immediately, as the villagers had become disgusted with his conduct. The documents produced with Ex. 48 will show that the condition of that school had deteriorated and the parents of the pupils of that school had stopped sending their children going to that school and the transfers of all the teachers of that school could not be avoided in consideration of the tense atmosphere of Kanaginahal and the pressing representations from the villagers that the condition of that school was going from bad to worse, and it was under these circumstances, all the teachers of that school were transferred in the interest of that school.

314. The Petitioner has no personal knowledge of this allegation in view of his verification to the petition. There is absolutely no evidence for the Petitioner on this point and the two persons who were said to have conveyed the information to the Petitioner, namely, Basappa Sultanapur and Binnal, appearing in the evidence of the Petitioner, had not been examined by him and absolutely no reason is given why Sri. Binnal was not examined though summoned, the inference that can be gathered will be that on the face of the documents produced with Ex. 48, and Ex. 236 already before the tribunal by this time, it was difficult for Sri Binnal to face these documents and the transfer of all the teachers of Kanaginahal school, as disclosed by the documents produced with Ex. 48, was made for bettering the education of the children of that school and at the instance of the people of that village and transfers of all the teachers of that school were made only after the election and those documents will show that their transfers were effected after the election and that those transfers have nothing to do with the election in question.

315. For the reasons stated above, I hold that the Petitioner has failed to establish the allegation contained in para 5 (*b*) (ii) of the election petition.

316. *The next allegation is contained in para* 5 (b) (iii) *of the petition.*

317. The allegation contained in para 5 (*b*) (iii) of the petition is that Sri S. I. Manvi, the Honorary Magistrate at Gadag, a School Board Member and a relation of the Respondent No. 1, threatened Sri Channappa Harlapur, Girimallappa Kariyappa Alli, Fakkirappa Basappa Kumbar and Sri T. M. Kabadi of Betgeri, all four of Betgeri and Sri Gadigeppagouda Madli of Gadag and they were asked to canvass and to get votes for the Respondent No. 1, on pain of being brought into difficulties, if they did not do so. That was on or about 15-2-1962.

318. The Respondent No. 1 has stated in para 26 of his written statement Ex. 36 that the allegations of para 5 (*b*) (iii) of the petition are false and that Sri S. I. Manvi is not his relative and that it is denied that Sri Manvi threatened any one of the persons named in that para and that those persons are all the friends of the Petitioner and their names have been introduced in the petition with some ulterior motive.

319. The above allegation is spoken to by the Petitioner, P.W. 22, P.W. 23, and by the Respondent No. 1 and by R.W. 27. There are no documents connected with this allegation.

320. The Petitioner has given evidence that Sri. S. I. Manvi is an Honorary Magistrate in Gadag and a relative of Respondent No. 1 and also a member of the Municiapl School Board. He has also stated that Sri Manvi threatened the said persons named in the petition that they should vote for the Respondent No. 1 and that if they did not do so, they would come into troulble and that such a threat was made to them on 15-2-1962. He has also given evidence that Channappa and Kabadi of Betgeri are the friends of Sri. Manvi and that T. M. Kabadi and Sri Manvi are in the managing committee of the K. L. E. College at Gadag and that the threat was that if they voted for the Petitioner and did not support the Respondent No. 1, they would not fare well, as they were moneyed people and had to pay income-tax and that they should not go against the Government. The Petitioner has admitted in his evidence that Sri S. I. Manvi is not an officer of the Income-tax Department.

321. P.W. 22, T. M. Kabadi has given evidence that he was supporting the Petition in the election and that about 6 or 7 days prior to the election, when he was canvassing for votes near Anantasa Kabadi's Chawl with Channappa Harlapur, Girimallappa Yelli, Fakirappa Kumbar for the Petitioner, at about 5 P.M., the Respondent No. 1, S. I. Manvi, Sri Noorani and Sri F. M. Baradwad also came for canvassing for the Respondent No. 1. That Sri S. I. Manvi called him aside asking him what he (P.W.22) had to do for which P.W. 22 told him that he had come to canvass for the Petitioner and Manvi told him that P.W. 22 being a trader should not do so and said that he was an Honorary Magistrate and that P.W. 22 paying sales-tax and income-tax and he would come into trouble, if he canvassed in that way. He threatened him that P. W. 22 should vote for the Respondent No. 1, as that would be good. He has also given evidence that Sri S. I. Manvi introduced P.W. 22 to the Respondent No. 1 and told him that P.W. 22 would work for him from that day. He has also given evidence that from that day, P.W. 22 had stopped canvassing for the Petitioner and he was supporting the Respondent No. 1.

322. P.W. 22 has given further evidence that he knows English and that about 2 or 3 days after Sri Manvi told him as above, told the Petitioner about the incident.

323. P.W. 23 Channappa Haralapur has corroborated the evidence of P.W. 22 on this point and he has given further evidence that he had worked all along for the Petitioner, he was the polling agent of the Petitioner. That the three persons, namely, P.W. 22, Fakkirappa Kumbar and Girimallappa Yelli did not help the Petitioner after the above incident and that Sri S. I. Manvi told P.W.22 in such a way as to create an impression on all that all the four persons mentioned above heard it and he does not remember whether he had informed the Respondent about the said incident.

324. The Respondent No. 1 has given evidence that Sri S. I. Manvi is not his relative and he was not his canvassing agent. That he was supporting him at the election, as he was his friend. He has deposed that neither Sri Baradwad nor Mulgund were his canvassing agents and they supported him because they are congress men and also his friends. He has deposed that he had not gone to the IX Ward in Betgeri to canvass votes with Sri Baradwad, Sri Noorani and Sri Manvi and what P.W. 22 and P W. 23 have stated about Sri Manvi having threatened them is false.

325. R.W. 27 S. I. Manvi has given evidence that he was the Honorary Magistrate for about two years, he is not related to the Respondent No. 1 and he respects the Respondent No. 1 as an elderly person and he had supported the congress candidate in the Gadag Constituency in the last election, doing propaganda work for the congress in the second and in the eighth wards and that he did not do work in the other wards. He has also given evidence that he had not threatened any voters that he would bring him into trouble, and that he does not know P.W. 23, Girimallappa Yelli, Fakkirappa Kumbar and Gadigeppagouda Madli and that he knows P.W. 22 but he (R. W. 27) had not told him anything about the vote. He has given further evidence that P.W. 22 had supported the Petitioner in the election.

326. The petitioner has no personal knowledge of this allegation in view of his verification in the petition. An Honorary Magistrate has no power relying upon which he can threaten people. He has no connection with the incometax, salestax or excise tax. C. S. Patil, the Chairman of the School Board, was assisting the Petitioner in the election. The Petitioner admits in his evidence (para 131 of his evidence) that P.W. 22 Kabadi was helping him during the election but P. W. 22 does not want to admit that fact. P. W. 22 Kabadi is Sri. Bakale's man who is a supporter of the Petitioner and whose picture could be seen from the picture published in the newspaper Ex. 257, in which both the Petitioner and that Bakale could be seen in that picture. P. W. 23 Channappa Harlapur admits that he had supported the Petitioner during his election and that he was also his polling agent. The alleged threat by Sri. S. I. Manvi had absolutely no effect on him (P. W. 23) because even after the alleged threat, P. W. 23 continued to support the Petitioner, so also P. W. 22 who had also supported the Petitioner as admitted by the Peti-

tioner. The story given in the evidence of these witnesses is a deviation from the stand taken in the election petition. The names of the Respondent No. 1, Sri Noorani and Sri. Baradwad, though not mentioned in the petition, have been dragged in the evidence. P. W. 22 has given evidence that he had informed the presence of the Respondent No. 1, Sri. Noorani and Sri. Baradwad to the Petitioner, a few days before the election. This could not be true, because, if that were so, their names would have been mentioned in the petition. In the evidence of P. W. 22 and P. W. 23, the place Anantasa Kabadi's chawl has also been introduced.

327. I am not convinced with the evidence placed by the Petitioner and his witnesses on this point. The witnesses appear to be partisan witnesses and their evidence appear to be tainted and interested and the evidence is artificial in character. For the reasons stated above, I hold that the Petitioner has failed to prove the allegation contained in para 5(*b*) (iii) of the petition.

328. *The next allegation is mentioned in para* 5(*b*) (iv) *of the petition*

329. The allegation contained in para 5(*b*) (iv) of the petition is that Sri. F. M. Baradwad theratened the numerous weavers of Betgeri as well as Sri. Nagappa Mitti, the Secretary of the Weavers Society No. 4 at Betgeri, to the effect that no yarn and no financial aid would be given to them and the society, if they did not support the Respondent No. 1 as against the Petitioner. This was about 16th February 1962.

330. The Respondent No. 1 has stated in para 27 of his written statement Ex. 36 that the allegations in para 5(*b*) (iv) are alse and that Sri Baradwad never threatended any weaver as alleged and that Nagappa Mitti named therein is a friend of the Petitioner.

331. The above allegation is spoken to by the petitioner, P. W. 21 and the Respondent No. 1. There are no documents.

332. The Petitioner has given evidence that Nagappa Meti was then the Secretary of the Weaver's Society and that now he is the Chairman of that Society. That on 16th February 1962, Sri Baradwad had told Nagappa Mitti, that if he did not vote for the Respondent No. 1, the supply of yarns and giving of loans to the Society would be stopped, and that Sri Baradwad is the President of the Weaver's Association and also the Chairman of the Dharwar Industrial Co-operative Bank. He has also given evidence that out of fear, Sri. Nagappa Mitti gave up helping him and that he began to help the Respondent No. 1.

333. P.. W. 21 Nagappa Mitti has given evidence that Sri F. M. Baradwad and the Respondent No. 1 had come for canvassing to his Society and that Sri. Baradwad and the Respondent No. 1 said to the

workers of the Society and share-holders that they should all support the Respondent No. 1 and that he (P. W. 21) said that they would see ; and Sri Baradwad told P. W. 21 Mitti to say what it was definitely and not simply that P. W. 21 would see and that if he (P W 21) did not support the Respondent No. 1, he (Sri. Baradwad) would not also consider about the application for yarns. P. W. 21 them told Baradwad that he would act according to what Baradwad had said in the interest of the Society and this was about 16th February 1962. P. W. 21 has given further avidence that their inclination was towards the Petitioner before this encident and that after the above incident, he (P. W. 21) called his people and told them that they were being told that their loans etc., would not be sanctioned, unless they supported the Respondent No. 1 and that therefore they should cease supporting the Petitioner and that they should support the Respondent No. 1, in the interest of the Society and that about 200 votes which were to go to the Petitioner, went to the Respondent No. 1. He has also given further evidence that he does not know that he is giving evidence on behalf of the Petitioner, and that he is not giving evidence on behalf of the Petitioner.

334. He has further deposed that when the Respondent No. 1 and Sri Baradwad came to that Society on 16th February 1962, Irappa Ganjagi, Bandagisab, Bavansab, Somappa and many others were present and that Irappa Ganjagi had asked Baradwad what the vote had to do with the loan to be sanctioned and Sri Baradwad threatened in the presence of all that whether there was any connection between the two or not the loan would not be sanctioned unless they gave votes as directed by him and P. W. 21 has given evidence that because of that threat, they withdrew their support to the Petitioner and went towards the side of the Respondent No. 1.

335. The Respondent No. 1 has given evidence that he had not gone with Sri Baradwad to canvass votes among Weavers and what P. W. 21 Nagappa Mitti had stated in this connection is false as P. W. 21 is the underling of the Petitioner and Mr. Kanavi.

336. The Petitioner has no personal knowledge of this allegation in view of his verification to the election petition. P. W. 21 Nagappa Mitti is highly interested and very unreliable, because he appears to be the hireling of the Petitioner, as P. W. 21 has been made to give evidence on many points as could be seen from his evidence. In the election petition, only the name of Sri Baradwad has been mentioned and the petitioner mentions only the name of Sri Basradwad in his evidence. But, in the evidence of P. W. 21, the name of the Respondent No. 1 has been dragged in P. W. 21 has given evidence that the weavers had made an application to the Industrial Co-operative Bank, Hubli for loan. That application is not before the Tribunal and that application has not been summoned to be produced. He has stated in his evidence that he did not take much interest in the last election and yet his evidence will dis-

close that he is made to swear on many points. This witness appears to be a partisan witness and his grand-mother, Rajavva had stood for the Municipal election and was elected on behalf of the Civic Board Party and her election was set aside thereafter. P. W. 21 has given evidence that Irappa Ganjagi, Bandagisab and many others were present when the Respondent No. 1 and Sri. Baradwad came to the Society on 16th February 1962 and yet none of those persons have been examined on this point and no reason is forthcoming as to why they were not examined. The evidence of P. W. 21 is very unsatisfactory and inconvincing, as there is a touch of artificiality in his evidence. I therefore, cannot believe his evidence on this point.

337. For the reasons stated above, I hold that the Petitioner has failed to prove the allegations made in para 5(*b*) (iv) of the petition.

338. *The next allegation is at para* 5(*b*) (v) *of the petition.*

339. The allegation made in para 5(*b*) (v) of the petition is that Sri Naregal is a Block Development Officer and the Respondent No. 1 is an ex-officio Member of the Taluka Development Board and Sri V.R. Malgond is the President of the Taluka Development Board. Sri Naregal went with them and canvassed for the Respondent No. 1 and his official position as Block Development Officer, was utilised for undue influence in the voters at Kurtakoti on 6th February 1962 and at Hatalageri on 12th February 1962. That the Panchayat Committee Members in these places, including Sri Amarappa Gulappa Inamati of Kurtakoti and Sri Devendrappa Basappa Beleri of Hatalageri were asked to canvass and get votes for the Respondent No. 1 and that Sri Naregal convened a meeting at the instance of Sri V. R. Mulgond and the Respondent No. 1, of the Chairman and Secretaries of the Panchayats on 7th February 1962, where also the official position of Sri Naregal was utilised for bringing undue influence on the Chairman and the Secretaries for supporting the Respondent No. 1.

340. The Respondent No. 1 stated in para 28 of his written statement (Ex. 36) that the allegations in para 5 (b) (v) of the petition are all false and that Sri Naregal did not work for this Respondent at all, nor did he call any meeting. That Sri V. R. Malgond is a Congress man and he supported this Respondent and Sri Amarappa Gulappa Inamati and Sri Devendrappa Beleri are the friends of the Petitioner and they never approached by either Sri Naregal or Sri Malgond.

341. The above allegation is spoken to by the Petitioner, P. W. 32, P. W. 36 and P. W. 71 and also by the Respondent No. 1 and R. W. 17. The document relied upon is Ex. 612 a diary. The above allegation consists of three parts :—

Part I.—that Sri Naregal convened a meeting at the instance of Malgond and the Respondent No. 1, of the Chairman and Secretaries of the Panchayats on 7–2–1962.

II.—that the official position of the B. D. O. was utilised or undue influence on the voters at Kurtakoti on 6-2-1962 and

Part III.—that the official position of the Block Development Officer was utilised for undue influence on the voters at Hatalageri on 12-2-1962.

Part I of the allegation

342. The Petitioner has not adduced any evidence of any sort to establish that Sri Naragal spoke to the Secretaries or the Chairmen at the seminar.

343. The Petitioner has no personal knowledge of this allegation in view of the verification to the petition. The above allegation is spoken to by P. W. 59 Gudaraddy and also by R. W. 17 Naregal and R. W. 24 Malgond.

344. P. W. 59 Venkatappa Gudaraddy has given evidence that he knows that there was a seminar called of the Village Panchayat Committee Chairmen and Secretaries and it was intended to be held after 10-3-1962, but actually the seminar was held inspite of it, in February 1962, because the general election was ahead on 22-2-1962 and that the seminar was held deliberately on 7-2-1962 with a view that influence could be exerted by the Respondent No. 1 on the Chairman of the Village Panchayat Committee and other big persons who would come for the seminar.—In his cross-examination, P. W. 59 has deposed that the seminar was intended to be held after 10-3-1962 and that what is stated in para of the resolution of Ex. 454 and that both the para 2 of Ex. 454 and the resolution No. 136 refer to District level Seminars and that what was actually held was Taluka Level Seminars and that there was no resolution about holding or not holding Taluka Level Seminars. He has also given evidence that the Deputy Commissioner in his letter dated 2-2-1962 had stated that 7-2-1962 was convenient for him.

345. R. W. 17 Naregal, the Block Development Officer has given evidence that he had not supported any candidate during election nor did he canvass for any candidate and that, he being a government servant, knew his limitations and responsibilities and that it is not true that he had assisted the Respondent No. 1 at the election. He has also given evidence that he had read Ex. 454 (copy of the letter written by the Deputy Commissioner, Dharwar to the B. D. O. and C. D.O etc.) and that the seminar mentioned therein had no connection with the election and that there was no direction to him that the Taluka Seminar should be held after 10-3-1962 and that the Taluka Seminar took place from 7-2-1962 to 9-2-1962 at Gadag and that it was held in the usual course as in the previous years. He has aslo given evidence that it is not true to say

that he hastened the holding of the seminar at the instance of the Respondent No. 1 and Sri Malgond.

346. R. W. 24 Malgond has given evidence that he was the President of the T. D. B. at Gadag during the time of election and that the Taluka Seminar took place from 7-2-1962 to 9-2-1962 and it took place in the usual course and it was not hastened deliberately. He has also given evidence that at that time, R. W. 17 Naregal was the Block Development Officer.

347. The allegation that the Taluka District Board Function was held earlier than usual and that the Block Development Officer was forced to put it earlier is absolutely false. The Petitioner has no personal knowledge and both the Petitioner and his witness P. W. 59 Gudaraddy, seem to have misled by the circulars etc., issued by the Deputy Commissioner. P. W. 59 Gudaraddy, after the document was put to him, clearly admits that what he relied upon, related to the District Board Seminar and not Taluka Board Seminar. He also admits that the Taluka-Development Board Seminars are held before the District Board Seminars are held.

348. It has been contended by learned advocate for the petitioner that the documents of the Taluka Board Office have been forged by R. W. 17 and R. W. 24 in order to assist the Respondent No. 1 in his election. I cannot consider this aspect of the matter, because there is no allegation of this matter in the election petition and the Petition also has not spoken to about it in his evidence. When there is no specific allegation about it in the petition, any amount of evidence without proper pleadings would not be a proper substitute in view of the decision reported in 1964 Mysore Law Journal page 488.

349. The materials placed on record show that the meeting of 7-2-1962 was not called by Sri Naregal at all on his own, but a resolution of the Taluka-Development Board No. 136 at page 84 of the resolution proceedings book. There was an attempt to say that the meeting was called permaturely for election purposes and that has been shown to be not true and based on a wrong reading of Ex. 454. No evidence of any sort at all has been adduced by the 'Petitioner that Sri Naregal spoke to the Village Panchayat Chairmen and Secretaries at the Seminar in so far as the allegation made in this Part I is concerned.

350. For the reasons stated above, I hold that the Petitioner has failed to prove the allegations made in part I mentioned above.

Part II of the Petitioner's allegation.

351. The allegation in this part is that the official position of the Block Development Officer was utilised for undue influence on the voters

at Kurtakoti on 6–2–1962. The above allegation is spoken to by the Petitioner and P. W. 36 and also by the-Respondent No. 1 and R. W. 17.

352. The Petitioner has given evidence that Sri Naregal was th B. D. O. at Gadag and that the Respondent No. 1 an *ex-officio* Member of the Taluka Development Board and that Sri Naregal had been to Kurtakoti on 6–2–1962 and Amarappa Gulappa and Inamati and Bimappa Gudaraddi were the Panchayat members there and that Sri Naregal told them and others that they were helping the Petitioner and that would not be advisable in the present government to help the Petitioner and therefore they should help the Respondent No. 1 in the election.

353. P. W. 36 Amarappa Gulappa Inamati who is a resident of Kurtakoti and a member of the Grama panchayat for 8 or 10 years, has given evidence that Sri Naregal had come on 6–2–1962 at 8 P.M. to the Gramapanchayat Office at Kurtakoti in a jeep, and that the other members of the Panchayat were also present there. He has deposed that Sri Naregal asked him (P. W 36)to get 'gudar' as there was a meeting of the Chairman and Vice-Chairman at Gadag and he (P. W. 36) agreed to it. That Sri Naregal asked P. W. 36 about the trend of election for which he (P. W. 36) told him that it was in favour of the Petitioner and Sri Naregal told him that the Petitioner should not be helped and that the Respondent No. 1 should be helped and that if they helped the Petitioner, they would come into much trouble and would be going against the-government. He has also given evidence that he was asked to vote for the Respondent No. 1 and that he should also secure the vote of the villagers for the Respondent No. 1 and he (P. W. 36 had agreed to it. P. W. 36 has given further evidence that he had told the villagers to vote for the Respondent No. 1 and that the villagers said that he was so far, canvassing for the Petitioner and now he had come to canvass for the-Respondent No. 1 for which P. W. 36 had answered that as there was a pressure of Sri Naregal, the Block Development Officer, he had to do so. He has also given evidence that there was a jeep of the Taluka Development Board and Sri Naregal had come in that jeep and that he knows that it was in that jeep that Sri Naregal had come, as he had seen it many times. He admits in his evidence that he was supporting the Petitioner during the election. At another stage, P. W. 36 has stated that he had agreed to become a polling agent of the-Petitioner, but he did not support the Petitioner.

354. The Respondent No. 1 has given evidence that he knows the Block Development Officer, Sri Naregal and neither he nor Sri Malgond took his assistance in the election, and that he had not gone to Kurtakoti with Sri Naregal. He has also deposed that on 6–2–1962, he had gone to Kurtakoti and this he says on being shown Ex. 168 the Deshavani paper.

355. R. W. 17, Sri Naregal, who is the Block Development Officer has given evidence that with Ex. 612 was produced the copy of his monthly

diary for the month of February 1962 which he had sent to the Deputy Commissioner. He has sworn that the said diary bears his signature and that its contents are correct. He has given evidence that the said diary shows that on 6–2–1962,he was at the headquarters at Gadag, he had attended the Taluka Development Board meeting there and that he had not left the headquarters on the 6th, 7th, 8th and 9th of February 1962 and that it is utterly false that he had been to Kurtakoti on 6–2–1962. He has also deposed that the Government had supplied to the Block Development Office, a jeep in May or June 1962 and before that the Taluka Development Office had no jeep nor was there any such jeep for the officer till then. He has given further evidence that he knows P. W. 36 Amarappa and that it is not ture to say the that aforesaid Amarappa was approached for ' gudar ' for the purpose of the seminar and that the seminar was held in a pendol. He has also deposed that it is not true to say that he had threatended the voters at Kurtakoti and that the Respondent No. 1, Sri Malgond were not with him.

356. The allegation in the petition is that Sri Naregal went to Kurtakoti, but the evidence is that Sri Naregal, the B. D. O., went to Kurtakoti on 6–2–1962. The Petitioner has stated in his evidence that he does not take the responsibility for the statement made by him that Sri Naregal, B. D. O. had been to Kurtakoti on 6–2–1962 and that he does not know whether there was a meeting at 3 P.M. of the T. D. B. at Gadag on 6–2–1962. In Ex. 168, the issue of Deshavani dated 14–2–1962, the relevant portion is at page 2 column 3, wherein it is mentioned about the meeting of 6–2–1962 at Kurtakoti and the names of the Respondent No. 1 and Smt. Mahishi have been mentioned there and not the names of either Sri Naregal or Sri Malgond and that meeting at Kurtakoti was an election propaganda meeting.

357. The Petitioner has no personal knowledge and he has given evidence that the above information that Sri Naregal had gone to Kurtakoti on 6–2–1962 was furnished to him by P. W. 36 and Yellappa Govindappa Yavagal and Bimappa Gudaraddy after the election. But only P. W. 36 Amarappa has been examined on this point and the other two persons have not been examined on this point. P. W. 36 pretends that he had supported the Respondent No. 1 during the election, because of the threat of Sri Naregal, the Block Development Officer, but he himself (P. W. 36) admits that he was acting as the polling agent of the Petitioner and his conduct is relevant under section 8 of the Indian Evidence Act. Further, P. W. 36 was contesting against the congress in the Taluka. Development Board Election and P. W. 36 was defeated in that election P. W. 36 also admits that Kurtakoti is 9 miles from Gadag. He has deposed that Sri Naregal had come in a jeep to Kurtakoti on 6–2–1962, but R. W. 17 Sri Naregal has sworn that the jeep was supplied to the Taluka Development Office by the Government only in the month of May or June 1962 and that the Taluka Development Office had no jeep before May or June 1962. The evidence of P. W. 36 is very unreliable

and highly interested, as he appears to be a partisan witness. The highly interested testimony of P. W. 36 is falsified by the evidence of R. W. 17 Naregal, who is a dis-interested and independent witness, being a public officer with the responsibility and whose evidence is corroborated in all material particulars by the diary spoken to by him which is an important public document, the entries therein having been made during the regular course of the official duties, and the correctness and the genuineness of which has not at all been disputed or challenged by the Petitioner. That diary shows that R. W 17 was in his headquarters at Gadag from the 6th to the 9th February 1962 and R. W. 17 (Sri Naregal) could not possibly leave Gadag and he did not leave Gadag on those days because he being an official, had to attend to the Taluka Board Seminar from the 6th to the 9th February 1962 of which he was in full charge. R. W. 36 himself admits that the distance between Gadag and Kurtakoti is nine miles, and without a jeep R. W. 17 could not have gone to Kurtakoti, particularly under the pressing engagements of the Taluka Seminar.

358. For the reasons stated above, I hold that the evidence of the Petitioner and P. W. 36 are false on this point.

Part III of the Petitioner's allegation : about Hatalageri incident of 12*th February* 1962.

359. This is spoken to by the Petitioner, P. W. 32 and P. W. 71 and also by the Respondent No. 1, and R. W. 17. The document relied upon is the diary with Ex. 612.

I hereby permit the diary to be exhibited separately as Ex. 612-A.

360. The Petitioner has given evidence that on 12th February 1962, Sri Naregal was the Block Development Officer, had gone to Hatalageri, called the members of the Village Panchayat and told them that it was not advisable in the present Government to help the Petitioner and that they should help the Respondent No. 1 and that Devendrappa Basappa Beleri was also threattened in a similar manner and that Sri Naregal did all this under the influence of the Respondent No. 1 and Sri Manavi and Sri Naregal had also canvassed for votes for the Respondent No. 1. The Petitioner has also given evidence that Hanumappa Nagur and Govindappa Hanaraddy told him about Sri Naregal having come to Hatalageri and that information was given to him in the Sale Society prior to the election and that Sri Naregal did all this under the influence of Respondent No. 1 and Sri Manavi as that is the inference drawn by the Petitioner from the fact that the Respondent No. 1 is a member of the T. D. B. and Sri Naregal moved about with the Respondent No. 1 and listened to what he said along with Manavi.

361. P. W. 32 Devendrappa Basappa Beleri from Hatalageri has given evidence that about 15 days before Sri Naregal (the B. D. O.) and

the Respondent No. 1 had come to the Hatalageri Village and that Sri Naregal had come in a car to the Panchayat Office and sent for the members of the Panchayat through a peon. That the Respondent No. 1 said as follows :—

> " Whom are you going to vote for ; all people said that the votes should be given to the Petitioner. Respondent No. 1 said that if votes were given to the Congress all help would be given and if they did not vote for the Congress no help would be given."

Thereupon, the Sarapanch and the Police Patil said they would do accordingly as directed by the Respondent No. 1. That P. W. 32 was also asked by the Respondent No. 1 and he (P. W. 32) said that he would be with the others. In the cross-examination, P. W. 32 has stated that Respondent No. 1 came in a car and not in a jeep and he (P. W. 32) has no interest in the election and that he had not spoken about what he had deposed to before this Tribunal either to the Petitioner or to anybody else before.

362. P. W. 71 Hanamappa Ramappa Naganur is from Sambapur Village . He has given evidence that about 10 or 15 days before the polling day, he had gone to Hattalageri when the Respondent No. 1 and Sri Naregal, came in a jeep to Hatalageri Panchayat Office and that Sri Naregal had told them that the Respondent No. 1 had stood for the election and that the votes should be given to him. That the other prominent persons of the village had also assembled there and they said that they had decided to vote for the Petitioner for which Sri Naregal said that the Respondent No. 1 had stood as a Congress Candidate and they should all vote for him. And the Respondent No. 1 said that if votes were given to him, he being a congress candidate would do the work, if elected and not otherwise. That some people said that they would vote for the Petitioner and some others said that since Sri Naregal was saying so, they would vote for Respondent No. 1. He has also deposed that Devendrappa Basappa and Govindagouda Patil were sitting quiet.

363. The Respondent No. 1 has given evidence that neither he nor Sri Malgond took the assistance of Sri Naregal and that it is not true that Sri Naregal had canvassed for him as alleged. R. W. 1 has deposed that he had not gone to Hatalageri with Sri Naregal and that what P. W. 32 Devendrappa and P. W. 71 Hanumappa Ramappa Nagnur have stated about his having taken Sri Naregal with him to Hatalageri is false and that they are stating falsely, because they are the underlings of the Petitioner.

364. R. W. 17 Sri Naregal has given evidence that on 12-2-1962, he had gone from Asundi to Chikkahandigol and back to Gadag as per his diary produced with Ex. 612, and it is utterly false to say that he had been to Hatalageri on 12-2-1962. He has also given evidence that

he had never gone to canvass for the Respondent No. 1 and it is false that he had gone to canvass for him with the Respondent No. 1, Sri Malgond and Sri Manavi.

365. The Petitioner has no personal knowledge of this allegation in view of his verification to the petition. He has given evidence that the information of Sri Naregal having gone to Hatalageri was furnished to him by P. W. 71 Hanamappa Naganur and Govindappa Honnaraddi before the election, and yet the names of the informants have not been mentioned in the election petition. The allegation in the petition is that Sri Naregal had gone to Hatalageri with the Respondent No. 1 and with Malgond. In his evidence, he has stated that on 12-2-1962, Sri Naregal had gone to Hatalageri and that it appears he had gone for his work ; and in his evidence he does not mention the presence of either the Respondent No. 1 or Sri Malgond in that village. But, in the evidence P. W. 32 Devendrappa, a car has been introduced instead of a jeep and in the examination-in-chief of P. W. 32, absolutely nothing is said about Sri Naregal telling the villagers to vote for the Respondent No. 1 His examination-in-chief shows that it was the Respondent No. 1 who had talked to the people and not Sri Naregal, and he is definite that the Respondent No. 1 had come in a car and not in a jeep.

366. The name of P. W. 71 Hanamappa Naganur does not appear in the petition or in the examination-in-chief of the Petitioner, but it appears for the first time, in his cross-examination (recorded in December 1962) and P. W. 71 has been examined on 26-6-1963. The name of P. W. 71 is not given in the original list of witnesses filed by the Petitioner in Ex. 111. The name of P. W. 71 is mentioned in Ex. 460 (additional list of witnesses of the petitioner) to speak to accounts only ; but P. W. 71 has given evidence not about the accounts, but about Sri Naregal's visit to Hatalageri. Further, P. W. 71 is not a resident of Hatalageri and admittedly, he is a resident of Sambapur. He is a co-worker in the Cotton Sale Society of which he is the Director and the Petitioner is the Managing Director, and P. W. 71 is a failed candidate against the congress in the T. D. B. election of 1960. He appears to be made to order or chance witness, because he says that he had gone to Hatalageri on that day only for an hour or two to purchase slabs from the quarry of one Setappa Hombal in that village, but it is very strange that having gone to the Hatalageri village for purchasing slabs, P. W. 71 had not purchased the slabs and he had not even gone to the quarry of Setappa or Setappa's house, but he went straight to the Panchayat Office where Naregal was stated to have gone ; he met at least Setappa, but he had not purchased the slabs. He has given further evidence that the Respondent No. 1 and Sri Naregal had come in a jeep there and according to the evidence of this witness, it is Sri Naregal and the Respondent No. 1 who spoke to he people in the village.

367. The evidence of the Petitioners, P. W. 32 and P. W. 71 are falsified by the evidence of R. W. 17 and the entries made in the diary produced with Ex. 612 for the month of February 1962. On a perusal of that diary, it is seen that on 6–2–1962, on 7–2–1962 to 9–2–1962, Sri Naregal was in the headquarters attending to the Taluka level Seminar ; on 10—2–1962, Sri Naregal had gone from Gadag to Kurtakoti and camp ; on 12–2–1962, he had gone to Asundi, Chikkahandigol and back to Gadag. Thus, the evidence of R. W. 17 and the entries of the diary produced with Ex. 612 negative the evidence of the Petitioner and his witnesses and there is absolutely no material placed on record by the Petitioner why the testimony of R. W. 17 Naregal and the entries made in that diary should not be believed.

368. There is improvement from stage to stage o the version of the Petitioner and his witnesses. The Petitioner refers the names of Naregal, the Respondent No. 1 and Sri Malgond ; while the Petitioner in his evidence does not refer either the Respondent No. 1 or Sri Malgond. P. W. 32 introduces the Respondent No. 1 and Sri Naregal in his evidence but he does not refer to a single word uttered by Sri Naregal. P. W. 71 speaks about Sri Naregal talking to the village people, but P. W. 71 was not cited in Ex. 111 (the list of Petitioner's witnesses but later cited only for the purpose of account in Ex. 460 additional list of witnesses of the Petitioner). One witness says that they came in a jeep, the others say car. The evidence of the Petitioner and his witnesses, apart from being highly interested, is discrepent and unreliable. The diary produced in Ex. 612 is an official document and R. W. 17 sweares to its contents which negative the story of the Petitioner and his witnesses. I cannot believe the testimony of the Petitioner and his witnesses on this point. Therefore, I reject their evidence as unreliable.

369. For the reasons stated above, I hold that the Petitioner has failed to prove the allegations mentioned in Part III. In the result, I also hold that the Petitioner has failed to prove the allegations mentioned in para 5(*b*) (v) of the election petition .

370. *The next allegation is contained in para* 5(*bb*) (i) *of the petition :*

371. The allegation contained in para 5(*bb*) (i) of the petition is that on 2nd February 1962, the Muslims of Gadag-Betgeri met in a meeting of Muslims convened by Sri K. M. Noorani and presided over by Haji, S. R.. Umachagi in which they took a decision as members of a particular religion and community that as Muslims, they should support the Respondent No. 1 and Miss Mahishi. They issued pamphlets regarding the decision taken. The pamphlets bore first and foremost the religious invocation of the Quran :

" Bisimilla Hir-Rahaman Nir-Rahim " expressed in the accepted form of Muslim religious numerology. Beneath this symbol, was

printed the Muslim religious symbol of the crescent and the star, beneath which was the block of the peculiar Muslim religious flags with the crescent and the star on. The entire thing was done in order to rouse the feelings of Muslims as Muslims in the name of religious symbols disrespect or disobedience of which, the Muslims believe, would lead one to perdition. The said symbols make it a matter of jehad to the Muslims. Sri Noorani and Sri Umachagi canvassed throughout, as the agents of the Respondent No. 1 and Miss Mahishi.

372. The Respondent No. 1 has stated in para 29 of his written statement Ex. 36 that the allegations in para 5(*bb*) (i) of the petition are not true and the allegations made therein are not admitted. That neither Sri Noorani nor Haji Umachagi was an agent of this Repondent and that this Respondent is not aware of what took place at the meeting referred to in the said para, nor was he directly or indirectly connected in any way with the issue, distribution or contents of the pamphlets referred to in that para.

373. The above allegation is spoken to by the Petitioners, P. W. 15 P. W. 16, P. W. 17, P. W. 35, P. W. 60 and P. W. 64 and also by the Respondent No. 1, R. W. 28, R. W. 29 and R. W. 35. The relevant document is Ex. 201 the pamphlet, containing the alleged Muslim religious symbols.

374. The Petitioner has given evidence that on 2-2-1962, K. M. Noorani who was canvassing daily for the Respondent No. 1 in the whole constituency, had held a meeting of all the Muslims in Sri Haji, S. R. Umachagi's adda where five hundred to five hundred and fifty muslims attended the meeting in which Sri Umachagi, a rich man having done such work to the Muslim Community had presided over the meeting and that Sri Noorani spoke in that meeting and said that all the Muslims should vote for the Respondent No. 1 and in that meeting, P W. 15 Husensab Annigeri, P.W. 16 Budansab Nargund and P.W. 17 Ummarsab Attar said that they should not ask votes on the basis of religions and that they should be left free to vote, for which Sri Noorani and others said that they had decided to vote for the Respondent No. 1 and they all belong to the Muslim Community and vote for the Respondent No. 1. The Petitioner has also deposed that the Respondent No. 1 who was present in that meeting had spent for refreshments on that occasion.

375. P.W. 15 Husensab Annigeri, a Compounder in the Ayurvedic Dispensary of Gadag Municipality has given evidence that he had attended the meeting of 2-2-1962 which was attended by 500 to 550 persons. He has also given evidence that in that meeting, one Dalayat first spoke and said that all the Muslims should vote for the Respondent No. 1, as the proposer of the nomination paper of the Respondent No. 1 was Sri Noorani. He has also given evidence that Sri Noorani in his speech in that meeting said that all the Muslims should vote for the Respondent No. 1 and that

if they act in an united manner, the Government would look favourably towards them and a religious injunction should be issued and hand bills should be prepared accordingly and that Sri Noorani proposed that religious injunction and religious symbols should not be violated and that it would be treason to vote against the Government. P.W. 15 has also given evidence that one Budansab Nargund, Mahaboobsab Dharwar, Ummarsab Attar and he (P.W. 15) said that in a society which would be free from casteism, there should not be any religious injunction and the President said that they should not violate the religious injunction and flag and should not raise objection and that if religious injunctions are violated, the words used would be:

"Caffir" and "Motir"

and P.W. 15 has deposed that he kept quiet when the President of that meeting (R.W. 35 Umachagi) said so, being overwelcomed by religious inhabition and that then a resolution was passed that all should vote for the Respondent No. 1 and that hand bills should be distributed accordingly and that according to the resolution, handbills similar to Ex. 201 were issued afterwards.

376. P.W. 15 has given further evidence that handhills similar to Ex. 201 were distributed from house to house and in lanes by R.W. 29 Noorani, R.W. 35 Umachagi and the Respondent No. 1 among the Muslim Community and the result of Ex. 201 at the election was that it served as a religious injunction and nobody was to violate it, and that if religious faith is violated according to the Muslim faith, one goes to hell and it created that effect on all the Muslims to vote for the Respondent No. 1 only.

377. P.W. 15 Husensab Annigeri has also given evidence that some persons use the numeral '786' in marriage invitations and that the expression 'Shri' denotes auspicion; similarly in the Muslim faith, '786' and the crescent are used for auspicion.

378. P.W. 16 Budansab Nargund states in his evidence that he attended the adda meeting of 2-2-1962 of the Muslims and he corroborates the evidence of P.W. 15 in material particulars. He has further deposed that R.W. 35 Umachagi threatened them saying that they were 'Caffirs' and 'Motirs' and therefore they kept quiet. P.W. 17 Ummarsab Attar who is a Councillor of the Gadag Betgeri Municipality is another witness who had attended the meeting and he corroborates the evidence of P.W. 15 in materials particulars on this point. P.W. 35 Hanamantachar Hombali, the editor of the Kannada daily 'Nagarika' paper and P W.64 Jayaramachar Malagi, the correspondent of 'Samyuktakarnatak' daily paper have also deposed that they were present in that meeting and they have given evidence corroborating the evidence of P.W. 15.

379. P.W. 60 Kaleel Kalburgi has given evidence that on 10-2-1962, he was going to the Chemist's shop, while so going he met the Respondent No. 1, Sri Baradwad and others and that the Respondent No. 1 gave him the pamphlet similar to Ex. 201 and that because of the religious number '786' on that pamphlet, the interest which the voters had to vote for the person of their choice disappeared and because of the religious influence of the mark, there was pressure to vote for the person mentioned in that pamphlet. P.W. 60 has also deposed that the Hindus also write in their letter pads the expressions 'Shri' 'Shri Basaveshwar Prasanna' etc., and that he knows that R.W. 35 Umachagi uses in his letter pad the figure '786' and the star and that R.W. 35 has many non-muslim friends and that these symbols are there even in the letters written to them. He has also deposed that he (P.W.60) had supported the Petitioner in his election.

377. The Respondent No. 1 has given evidence that he had not attended the meeting held in the adda of Sri Umachagi on 2-2-1962 and that neither Sri Umachagi nor Sri Noorani were his canvassing agents. He has deposed that they are the leaders of the Muslim Community in Gadag and they supported the Congress and therefore, they had supported him and that they had also supported Smt. Sarojini Mahishi another congress candidate for the Parliament. He has given further evidence that they supported the congress from the point of view that they would help the amelioration of their community. He has deposed that he did not issue the appeal in pamphlet similar to Ex. 201 and that he had no hand either getting it printed and distributing the same.

378. R.W. 28 Husensab Sirahatti, a resident of Gadag, has given evidence that he had attended the adda meeting on 2-2-1962 which was convened only for the Muslim Community to discuss as to what the Muslims were to do in connection with the impending election. He has also given evidence that nobody else except the Muslims were present in that meeting and that the Respondent No. 1 was not present in that meeting and also P.W. 35 Hanamantachar Hombali and P.W. 64 Jayaramachar Malagi were also not present in that meeting, and that the above meeting was not called with a view to support a particular candidate, but to discuss that matter. He has deposed that about 10 to 15 persons spoke in that meeting and nobody was threatened at that meeting and that R.W. 35 Umachagi did not call anyone as 'Caffir' or 'Motir' and that after discussion, it was settled that the congress candidates should be supported as it was decided that it was a good party and it was good from all points of view to support that party. He has given further evidence that no religious or social injunction was attached to the resolution passed in that meeting.

379. R.W. 29 Noorani has given evidence that the adda meeting of 2-2-1962 was called by him, and R.W. 35 Umachagi had asked him to

call that meeting, to consider and decide what attitude the Muslims should take in that election.

380. R.W. 29 has also given evidence that all the persons who spoke at that meeting said that for the betternment of the Muslim Community all should support the candidates put up by the congress party, and that R.W. 35 Umachagi was the Persident of that meeting and that the speakers in that meeting were heard patiently and everybody was given the opportunity to speak and that R.W. 35 did not disturb any of the speakers and R.W. 35 did not use any such words as 'Caffir' and 'Motir' in that meeting to anybody, and that there was no injunction of any sort in that meeting, and there was no intention to gag any voter. He has also given evidence that the decision in that Muslim meeting of 2-2-1962 was unanimous. The English copy of the resolution (Sl. No. 4 with Ex. 786) which is permitted to be exhibited) bears his signature. He has also given evidence that the said meeting was a confidential meeting restricted to Muslim Community and that no non-Muslims were present in that meeting and that he knows the Respondent No. 1, P.W. 35 Hanamantachar Hombali and P.W. 64 Jayaramachar Vaidya Malagi and none of these three persons was present at that meeting.

381. R.W. 29 has given further evidence that he had sent the resolution of that meeting to the paper and the Respondent No. 1 or the congress had no hand in sending the resolution to the paper and that he knows R.W. 28 Husensab who was present at the meeting on that day. He has deposed that P.W. 16 Husensab Nargund, and P.W. 17 Ummarsab Attar were present in that meeting but they were not the speakers in that meeting and Husensab Annigeri and Mahaboobsab Dharwar were known to him and they were not present at that meeting. He has given evidence that the copies of the pamphlets similar to Ex. 201 were got printed by R.W. 35. Umachagi and they were distributed among the Muslims and he (R.W. 29) did the work of distribution and neither the Respondent No. 1 nor the Taluka Congress Committee had anything to do with the distribution. He has stated that the numeral '786' the crescent and the stars in Ex. 201 are auspicious and they are used on many auspicious occasions by Muslims and that R.W. 35 Umachagi used them on his letters and envelopes and that they do not connote any religious injunction. He has given further evidence that most of the members of the Muslim Community had supported the congress candidates at the election and some of the Muslims supported the Petitioner also and there was no differential treatment to the Muslims who had supported the Petitioner in the election. That he was not an agent of the Respondent No. 1 in the election and that he respects the Respondent No. 1 as a friend and the Respondent No. 1 also respects him in the same manner.

382. R. W. 35 Umachagi has given evidence that on 2nd February 1962, he had called for a meating at Gadag in his timber depot to know the opinion of all the Muslim voters of the Gadag-Betgeri as to whom to

vote in the election and that work of convening the meeting was entrusted by him to R. W. 29 Noorani. He has corroborated the evidence of R. W. 29 in material particulars in this point. He has also given evidence that the Respondent No. 1, P. W. 35, P. W. 64 were not present in that meeting and that P. W. 15, P. W. 16 and P. W. 17 were present in that meeting but they did not speak in that meeting, and that it was not true that he used the abusive words as 'Caffir' and 'Motir' to P. W. 15, P. W. 16 and P. W. 17.

383. It has been held in 1964 Mysore Law Journal (Supreme Court's notes) pages 72 and 73 of the issue of 25th July 1964, that it is implicit in Section 123(3) of the R. P. Act that having regard to the terms of Section 100 of the R. P. Act, that the use of or appeal to the national or religious symbols must be made by the candidate or his election agent, before it could be regarded as a ground for declaring the election void. If the evidence on record fails to establish the responsibility for the use or appeal to religious or national symbols by the returned candidate or by his election agent or by any other person with his consent or his election agent, no ground for setting aside the election may be deemed to be made out.....In the trial of an election petition, the burden of proving that the election of a successful candidate is liable to be set aside on the plea that he was responsible directly or through his agents for corrupt practices at the election, lies heavily upon the applicant to establish his case, and unless it is established in both its branches *i. e.*, commission of acts which the law regards as corrupt, and the responsibility of the successful candidate directly or through his agent or with his consent for its practices, not by mere preponderance of probability, but by cogent and reliable evidence without any reasonable doubt, the petition must fail. Section 123(3) introduced by the Act 40 of 1961 must be read in the light of the fundamental right which is guaranteed by Article 29 clause (1) of the Constitution, for, in ascertaining the true meaning of the corrupt practice, the area of the fundamental right of citizen must be steadily kept in view. The clause cannot be so read as trespassing upon the fundamental right.

384. Though, an appeal by a prominent Yadava to his 'Yadava brothers' to do their duty to the country by voting for the congress, is an appeal to a caste or community, it is not an appeal on the ground of religion, caste or community (Ex. 20 E. L. R. 221). What is material under the Indian Law is not the actual effect produced, but the doing of such acts as are calculated to interfere with the free exercise of any electoral right (22 E. L. R. 482 Supereme Court decision).

385. In the instant case, neither the Respondent No. 1 nor Smt. Sarojini Mahishi (Congress Candidate for the Parliament) is a Muslim as both of them are Hindus · and neither R. W. 35 Umachagi nor R. W. 29 Noorani is a spiritual head of the Muslim community. It is no doubt true that Sri Umachagi is reported to have visited Mecca on two or three

occasions. But, merely visiting Mecca does not entitle a person to be a spiritual or religious leader. There is nothing wrong in any community calling for a meeting and deciding in its own interest what attitude that community must adopt in the election.

386. P. W. 15 Husensab Annigeri is interested in the Petitioner, because the dispensary where he is working as a Senior Compounder belongs to the Municipality of which P. W. 34 Kanavi is the President representing the Civic Board Party of which the Petitioner is admittedly the Chairman for many years,and the President of the Municipality is elected by the Civic Board Party which was then in majority. Thus, P. W. 15 is the servant of the Municipality and naturally he is supporting the Petitioner. P. W. 15 has given evidence that nobody said anyting about Smt. Sarojini Mahishi and this statement is false in view of the resolution passed in that meeting which is sworn to by R. W. 29 Noorani. The statement of P. W. 15 about the presence of the Respondent No. 1 in that meeting is falsified by the evidence of R. W. 29 Noorani, R. W. 35 Umachagi and R. W. 28.

387. P. W. 16 Budansab Nargund speaks about the presence of P. W. 35 Hombali and P. W. 64 Malagi which was not spoken to by either the Petitioner or P. W. 15 . All the announcements and the reports in the newspapers regarding the meeting, namely, Ex. 158, Ex. 179, Ex. 159, Ex. 180, etc., show that it was meeting of the Muslims. There is no publication to show that the Respondent No. 1 was present in that meeting. The introduction of P. W. 35 and P. W. 64 by P. W. 16 is therefore an afterthought and an improvement in the story of the Petitioner. Further, this witness P. W. 16 is a peon in the Gadag-Betgeri Municipality of which P. W. 34 Kanavi is its President who has actively supported the Petitioner during the election and therefore, P. W. 16 is an interested witness and his evidence is therefore unreliable to be acted upon.

388. P. W. 35 Hanamantachar Hombali is the proprietor and correspondent of the Nagarika daily paper and adimttedly, he was suporting the Petitioner during the election and therefore he is interested in the Petitioner. The presence of P. W. 35 Hombali in the meeting is not mentioned in the petition nor spoken to by the petitioner in his evidence. The Petitioner has no personal knowledge of this meeting in view of his verification to the petition. P. W. 15 also does not mention the presence of P. W. 35 in his evidence. P. W. 35's name has been introduced for the first time by P. W. 16. If really, P. W. 35 Hombali had attended that meeting as alleged, P. W. 35, being admittedly a supporter of the Petitioner during the election would not have failed to mention the important fact of the tea being given and the bill being footed by the Respondent No. 1 in the Nagarika daily. The non-mention of this fact in his paper shows that P. W. 35 was not at all present. Further, if P. W. 35 was present at the meeting of 2nd February 1962, he, being the paper correspondent, should have published about the meeting of his own accord in his Nagarika

d y of which he is the proprietor and the correspondent. But, P. . 35 Hombali himself admits in his evidence that it was Sri Noorani who had intimated about the publication of the report of the meeting of 2nd February 1962, thereby negativing his presence in that meeting. Further, P. W. 35 Hombali is an interested person in the Petitioner, because he (P. W. 35) is deriving a pecuniary benefit from the Petitioner and he (P. W. 35) has been made to speak on many points and therefore, he appears to be the mouth piece of the petitioner and hence, highly interested.

389. P. W. 64 Jayaramachar Vaidya Malagi is a correspondent of Samyukta Karnatak daily in Gadag and he has given evidence that he knows P. W. 35 Hombali, and that P. W. 35 Hombali and he are not friends. But P. W. 35 Hombali has given evidence that he is a friend of P. W. 64. The materials on record show that P. W. 64 is a friend of P. W. 35 who is admittedly a fellow correspondent supporting the candidature and cause of the Petitioner during the election. P. W. 64 who speaks about the details of the meeting is a Hindu. According to the other witnesses, the meeting of the adda meeting of 2nd February 1962 was held at about 10 or 10-30 A. M. The dispensary of this witness (P.W. 64) was working during the election from 8 A. M. to 12-30 P. M. and in the evening from 4 P. M. to 7 P. M. so, P. W. 64 could not have attended the meeting at 10 or 10-30 A. M. on 2nd February 1962, because, it fell during the working hours of his dispensary. P. W. 64's financial status does not appear to be bright. Apart from being highly interested in the Petitioner, it appears from his evidence that he is under the influence of P. W. 35 Hombali. The presence of P. W. 35 and P. W. 64 are also falsified by the evidence of P. W. 15, R. W. 28, R. W. 29 and R. W. 35.

390. The Respondent No. 1 had nothing to do with any other matter concerned in that meeting, or with the distribution of the pamphlets similar to Ex. 201. The Respondent No. 1 has sworn that R. W. 29 Noorani and R. W. 35 Umachagi were not his agents during his election and R. W. 29 and R. W. 35 have also sworn that they were not the agents of the Respondent No. 1. The meeting of 2nd February 1962 was called in the interest of the Muslim community and the Respondent No. 1 had absolutely no hand in it. The consent of the Respondent No. 1 was neither alleged in the petition nor proved and the petitioner has no personal knowledge of that meeting.

391. Ex. 201 the pamphlet is clearly an appeal as admitted even by the Petitioner as containing a desire on the part of R. W. 35 Umachagi and that it is not a command or 'hukum' or injunction. The Petitioner and all his witnesses have admitted that the printing of the numeral '786' the stars, the flags and the crescent are commonly used in issuing invitations. The number and the symbols may have some religious importance, but according to the decision reported in 1964 Mysore Law Journal (Supreme Court's notes) 72, they do not come under Section

123(3) of the R. P. Act. Agency of R. W. 29 and R. W. 35 to the Respondent No. 1 and even the consent have been neither alleged nor proved by the Petitioner.

392. No religious injunction is alleged except a reference to the symbols. No. religious injunction, apart from the religious symbol, is at all alleged in the petition. Ex. 309 is the article in the Nagarika daily by a section of the Muslim to support the Petitioner in the election. It is signed by 400 or 500 Muslims. These signatories refer to the adda meeting and also to Sri Umachagi and these signatories also supported the Petitioner, but these signatories do not say a word or whisper anything about the religious injunction in Ex. 309 showing thereby that there was absolutely no religious injunction at all in that adda meeting of 2nd February 1962, though these signatories refer to the publication of Ex. 201 (as 'prakatane'). Whether the crescent and stars are religious symbols and were they used to induce the voters and is it proved that Noorani or Umachagi made an appeal on the ground of divine displeasure and spiritual censure and is it proved that Noorani and Umachagi were proved to be the canvassing agents of the Respondent No. 1 could be seen from the evidence on record by the above said witnesses. Even assuming that they were the canvassing agents for the Respondent No. 1 whether in the absence of any all allegations or proof of consent or authority, the Respondent No. 1 could not be held liable for their acts in the absence of consent and authority.

393. In a sense the crescent and stars may be religious symbols like 'Shri' or 'Om'; but they are also in practice used as auspicious signs. The evidence discloses that many Muslims use the numeral '786' crescent and stars for auspicious things; even Dr. Kalburgi has admitted that R.W. 35 Umachagi, when communicating with the non-muslims. The above numerals and the figures were used by Umachagi in the natural course of things. The publication in Ex. 309 clearly shows that the Muslims of Gadag Betgeri were not at all influenced by either Ex. 201 or by the add meeting.

394. Neither Noorani nor Umachagi had done anything wrong. They tried to guard the interest of the Muslims in general and they adopted the democratic method of ascertaining the wishes of the Muslim community in their own interest. It is not proved at all that Noorani and Umachagi were the canvassing agents of the Respondent No. 1 .They had canvassed and worked for the Muslim community by supporting the congress and the candidates set up by the congress party in their own interest. Even if it is proved that they were canvassing agents of the Respondent No. 1, unless any authority or consent of the Respondent No. 1, is proved the Respondent No. 1 cannot be held responsible. The last moment attempt of the Petitioner to connect the Taluka Congress Committee Secretary or the Respondent No. 1 with the publication of Ex. 201 is clearly false.

395. The Petitioner's personal knowledge cannot be believed on this point of his verification in the petition. The witnesses for the Petitioner have been shown to be supporters of the Petitioner and unreliable. R.W. 29 and R.W. 35 have sworn that whatever they did, they did of their own accord and that the Respondent No. 1 had no hand either in the meeting itself or the printing or even in the publication and distribution.

396. The mere fact that an act may have some influence over the conduct or behaviour of a candidate or elector is not sufficient to constitute undue influence. The influence exerted must be undue and that it must be such that it interfered with the free exercise by a candidate or elector or an electoral right. It has been said that interference with the free exercise of a right implies a certain element of compulsion in the matter of the exercise of that right. In order to constitute undue influence, a threat must be serious and deliberately uttered with the intention of carrying it into effect and not in a moment of anger. In the instant case, none of the above ingredients are present. I am not at all convinced with the evidence adduced by the Petitioner and his witnesses on this point and I, therefore, cannot accept their version.

397. For the reasons stated above, I hold that the Petitioner has failed to prove the allegations contained in 'para 5 (*bb*) (i) of the election petition.

398. *The next allegation is made in para 5 (bb) (ii) of the Petition.*

399. The allegations contained in para 5 (bb) (ii) of the petition is that the Respondent No. 1 distributed on 13-2-1962 the issue of the Navanagarika daily paper of 13-2-1962 in which the leading article expatiated on the caption that " a vote for the congress was an act of devotion for Basavanna." Basavanna is the well-known reformer of the Lingayat Sect which has the largest numbers of religious followers in this part of India and who is accepted as an incarnation of Nandi, the divine Mount of Siva. The leading article ended on the note that as the Congress was now trying to carry out Basavanna's work with more enthusiasm, all should bear this in mind and vote for the pair of bullocks which are the physical symbols of Basavanna. This was followed by the distribution by Respondent No. 1 on 17-2-1962 of the issue of the same paper dated 17-2-1962 in which appeared the article captioned " Do not sin against Basavanna " which began on the note that the physical symbol of Basavanna was the pair of bullocks on the industriousness of which depended the scales and lamp, that in the absence of grains, there was no place for scales and that votes should be cast for the pair of bullocks for the love of and devotion of Basavanna, etc." The Symbol of the Respondent No. 1 was the pair of bullocks, while the symbols of the Petitioner and the Respondent No. 3 were respectively scales and lamp. This issue in its turn was followed by the distribution on 18-2-1962 by the Respondent

No. 1 of the issues of the same paper of 18-2-1962 in which was published the article "Basavanna's appeal" in which Basavanna was represented to have said that he had prayed Siva to bestow his i.e., Basavanna's symbol of the pair of bullocks on the Congress, that Sivahad approved of Basavanna, that the standing pose with the yoke on was the sign of preparedness, that if Siva were not part company with you, you should go hand in hand with Basavanna, that otherwise you would be causing detriment to yourselves, that you should please mark your vote on the symbol of the pair of bullocks, etc." This appeal was made on a vast scale throughout the constituency to Shaivets in general and to the Lingayats in particular.

400. The Respondent No. 1 has stated in para 30 of his written statement Ex. 36 that the allegations in para 5 (bb) (ii) are not true and it is false to say that this Respondent distributed any issue of Navanagarika daily and that he is not connected directly or indirectly with the distribution of any issue of the paper and that he had also no hand in any of the articles in the paper.

401. This allegation is spoken to by the Petitioner, P.W. 5, P.W. 8, P.W. 11, P.W. 12, P.W. 33, P.W. 57, P.W. 69 and also by the Respondent No. 1, R.W. 3, R.W. 4; R.W. 5 and R.W. 18. The documents relied upon are Ex. 189, Ex. 193 and Ex. 194 which are the issues of the Navanagarika Kannada daily dated 13-2-1962, 17-2-1962 and 18-2-1962 respectively.

402. The Petitioner has given evidence that among the Lingayats, Basavanna is placed on equal footing with God and is worshipped as God by them and that there was an editorial in the issue of Navanagarika Ex. 189 dated 13-2-1962 under the title "Vote to Congress is devotion shown to Basavanna" and the reference is to Mahanubhav Basavanna and what is mentioned therein is that all should vote for the physical symbol of Basavanna that is, the pair of bullocks and it has been said so that there may be religious sentiments created for voting Respondent No. 1 whose symbol was a pair of bullocks and that the copies of this issue were distributed among all the voters by the Respondent No. 1 and by others. An article under the caption "Do not be a traitor to Basavanna" is in the issue of Navanagarika daily dated 17-2-1962 (Ex. 193) and the scales referred to is to the Petitioner's symbol and the reference to light was to the symbol of the Respondent No. 4. He has also given evidence that by that article, a sentiment was created among the Lingayats and devotees of Shiva that they should vote for the symbol of the Basavanna only, otherwise they would incur displeasure of God and commit sin and that the copies of Ex. 193 were distributed in the constituency. And that on 18-2-1962, in the issue of Navanagarika Ex. 194, appears under the caption "Basavanna's appeal" the Respondent No. 1 had arranged to get this appeal made so that among the devotees of Basavanna creating the fear of God, votes should be secured for the Respondent No. 1.

He has given evidence that there are more than 10 thousand Lingayat voters in the Gadag constituency and by the statement in Ex. 194, the voters would otherwise bring about their own harm is meant that they would incur divine displeasure, if they do not vote for the Respondent No. 1. He has also deposed that the Respondent No. 1 and his agents distributed the copies of Ex. 194 among the voters in the Gadag Constituency and the result of which was that except a few, those who wanted to vote for him and support him, left the Petitioner and went over to the Respondent No. 1.

403. The Petitioner has also given evidence that he knew personally that the Respondent No. 1 was distributing the copies of Ex. 189 in Gadag and he also knows personally about Ex. 193 being distributed personally by the Respondent No. 1, but he does not know about Ex. 194 personally and that he cannot say when actually the copies of Ex. 193 were distributed by the Respondent No. 1, but he knows that it was at the election. He has given further evidence that many persons told him about the distribution of Ex. 194 by the Respondent No. 1. Ummarsab Attar, Mahendrakar, S. B. Angadi, Doddaningappa Durganavar and many others told him about this distribution by the Respondent No. 1.

404. P. W. 3 Virupaxagouda Patil, from Hirehandigol, has given evidence that Navanagarika and Deshavani issues were being issued in his village during the election days and P. W. 5 Basappa Gadagin from Asundi has given evidence that one Venkanna, himself, Fakkiraddi, Hemaraddi and others were working on behalf of the Respondent No. 1 in Asundi and that they were taking the newspapers of Navanagarika and Deshavani and were distributing them.

405. P. W. 8 Adiveppa Hampannavar from Hulakoti village has given evidence that he had read the article Ex. 189, Ex. 193 and Ex. 194 and also read them to his family people and that before reading these articles, he was inclined to vote for the Petitioner, because the Petitioner belongs to his village and that after reading those articles in those papers, the impression on him was that if he had voted for the Petitioner, he would be unfaithful to Basavanna and that Basavanna is his family deity. He has also given evidence that a boy named Irappa Kusugal was distributing these papers and that Irappa Kusugal is still at Hulakoti. He has also given evidence that he does not know who had written the relevant articles in Ex. 189, Ex. 193 and Ex. 194 and that he does not know on whose behalf he has received the summons and that he does not know that he had come to give evidence on behalf of the Petitioner.

406. P. W. 11 Budappa Ramappa Tirlapur from Binkadakatti has given evidence that Deshavani and Navanagarika were received in that village during the election and that the Respondent No. 1 was sending them and they were being distributed freely and that the Respondent No. 1 had kept the papers in the padasala of his house. P. W. 12 Ningappa Patted from Betgeri has given evidence that Deshavani and Navanagarika

issues were being sent to his village during the election days, P. W. 62 Vasantaraddy from Asundi has given evidence that no papers were being received at the election time in that village and therefore, during the election he had not read any paper.

407. P. W. 69 Totappa Hombal is from Hosahalli village. He has given evidence that he used to go to the shop of one Gangappa at Gadag for watch repairs and the Respondent No. 1 was sitting there and the Respondent No. 1 asked hin to distribute Navanagarika and Deshavani about 8 or 10 each daily in that village and accordingly, he used to distribute them in that village and also reading them. He has given evidence that he had distributed the issues of Navanagarika Ex. 189, Ex. 193 and Ex. 194 and the relevant articles mentioned therein are about Basavanna and that on reading those articles, he felt that if he had voted for Basavanna, he would get religious merit and that if he did not vote for Basavanna, he would incur the religious de-merit and that he would incur sin and would not get happiness. He has also given evidence that he met the Respondent No. 1 in the shop of Gangappa on the 17th and that the Respondent No. 1 had 50 issues of Navanagarika and Deshavani then in his hand.

408. The Respondent No. 1 has given evidence that he did not distribute the copies of Navanagarika in Gadag-Betgeri or in any other villages and that the editor of Navanagarika or Deshavani have not published any articles at his instance or with his consent.

409. R. W. 3 Devaraddy from Binkadakatti has given evidence that nobody was distributing the papers in the village of Binkadakatti. R. W. 4 Venkaraddi from Asundi has given evidence that it is false to say that the Respondent No. 1 was sending him Navanagarika and Deshavani and that he was distributing them in the village. R. W. 5 Govindagowda Hiregoudar of Hulakoti has given evidence that it is false to say that he distributed the issues of Navanagarika and Deshavani in the Hulakoti village and that the Respondent No. 1 was sending them to him.

410. R. W. 18 Dr. Konnur from Gadag is the editor of Navanagarika paper and he has given evidence that he is a congress member since many years and that he supported the congress candidates during the election of 1962 and it is not true to say that he was committed to campaigner and canvass for the Respondent No. 1 and Smt. Mahishi. He has also given evidence that he had written the article Ex. 189, the issue of Navanagarika dated 13th February 1962 under the caption "Vote given to the Congress is devotion to Basavanna" and that he wrote it on his own responsibility and according to him, there is nothing wrong or objectionable in it and that his object in writing the above leading article was to show that the congress stands for the uplift of the common man and riots and it was not his intention to rouse the religious feelings. He has also given evidence that the article in Ex. 193 under

the heading " Do not be unfaithful to Basavanna " is not written by and he cannot say who wrote it and he does not think that there is anything wrong in publishing Ex. 193 and if such articles were received, he used to direct that they might be published, if they were favourable to the congress. He has also given evidence that the article in Ex. 194 under the caption " Basavanna's appeal " was sent by somebody and he does not think that there was anything wrong in publishing it. He has given further evidence that no article or publication had been got made in his paper, Navanagarika, through the instrumentality of the Respondent No. 1 and that so far as he knows, the Respondent No. 1 has not got distributed any issues of his paper.

411. The relevant articles about Basavanna in Exs. 189, 193 and 194 were admittedly not published by the Respondent No. 1 or anybody on his behalf. The appeals appearing in those articles are not addressed to any particular caste or community as such, because the appeals in these three articles are of a general character. The services rendered by the congress after the independence have been pointed out in one of those articles and while pointing out those services of the congress, an anology is drawn from Basavanna with respect to the services rendered by the congress to the people. The Petitioner has failed to show that the appeals complained of were based on the ground of religion as set out in Section 123(2) of the R. P. Act or Section 123(3) of the R. P. Act. He has failed to show that the said appeals were published or made by the Respondent No. 1 himself or by his agent or by some person or persons with the consent of the Respondent No. 1 or his election agents. None of the witnesses examined by the Petitioner on this point has stated that any appeal was made on the ground of religion. Of course, there is one sentence appearing in " Basavanna's appeal " in Ex. 194 in which it is mentioned that if Shiva were not to part company with you, you should go in hand with Basavanna ; otherwise you would be causing detriment to yourselves." This may sound undue influence, on the ground of religion, but it must be remembered that this appeal was published or got published not by the Respondent No. 1 or anybody on his behalf.

412. The evidence led in by the Petitioner is that the Respondent No. 1 distributed the copies of the dailies and that they were distributed to the voters throughout the Gadag constituency. But, there is absolutely no evidence that the voters were threatened with the peril to their souls or salvation and that if they (voters) did not cast their votes for the Respondent No. 1, then their immortal soul and their salvation would be perilled. In fact, no witness examined by the Petitioner on this point has given evidence that any threat or compulsion or undue influence of any sort whatsoever was ever offered or used either by the Respondent No. 1 or anybody on his behalf. There is no evidence that the inducement and the appeal to the religious and the communal sentiment on the part of the Respondent No. 1 was such that the voters were induced or made to believe that they (the voters) would be rendered objects of divine

displeasure or spiritual censure or that their soul and their salvation would be perilled and that if they did not vote for the Respondent No. 1. they would incur the divine displeasure or spiritual censure.

413. Undue influence like any other fraud must be established by positive evidence and cannot be arrived at by conjecture. The ingredients of undue influence as required under the R. P. Act are conspicuously absent in the evidence of the Petitioner and his witnesses on this point.

414. In the petition, it is the Respondent No. 1 who had distributed ; it extended to his agents and others not naming them at all in the Petitioner's evidence. The particular part of the petition is restricted to three articles only in the Navanagarika papers Ex. 189, Ex. 193 and Ex. 194. The ingredients in the petition are too general and vague. The evidence led in is generally extending to all issues of Navanagarika during the period of election. Neither villages nor the names of the witnesses are named in the petition. The evidence led in by the Petitioner on this point is all un-reliable and interested. The question of probability and common sense is to be applied. It should not be forgotten that after the independence in our country, the voters in our country have faced and acted in the three general elections of 1952. 1957 and 1962 and that the congress is an all India party. The main object of the relevant articles in Ex. 189, Ex. 193 and Ex. 194, and the purpose appears to be to counsel, advise, recommend, entreat and point out to the voters in general the true line of moral duty of the voters and to explain to them why the congress candidates are better than the other candidates. The Petitioner has failed to show that the appeal was made by a person whose opinion in the matters of religion carried great influence with the voters of the Gadag constituency and that as a result of such appeal, the voters of that constituency had considered that the non-compliance with the wishes of the maker of the appeals would be irreligious or sinful and thereby rendered an objects of divine displeasure or spiritual censure. The position of the Respondent No. 1, being an M. L. A. previously, his age and stand in the public field, and such a person going and distributing 50 copies of the news papers carrying personally in his hand and going to the shop of Ganappa looks most unnatural, highly improbable and does not stand to reason or common sense. The Petitioner has failed to bring home the guilt of the Respondent No. 1 under Section 123 clause (2) of the R. P. Act and I, therefore, hold that he has failed to prove the allegations mentioned in para 5(*bb*) (ii) of the election petition.

415. For the reasons stated above, I hold that the Petitioner has failed to prove the allegations mentioned in para 5(*bb*) (ii) of the petition, and consequently he has failed to prove the issue No. 2.

Issue No. 3 :—

"*Does the Petitioner prove the corrupt practices of appealing to voters the ground of religions, etc. under Section* 123(3) *and Section* 123(3-*A*) *of the R.P. Act*, 1951, *as alleged in paragraphs* 4(*c*) *and* 4(*cc*) *and* 5(*c*) (*i*), (*ii*) *and* 5(*cc*) *of the petition?*"

416. The allegations in para 4(*c*) are to be read with the particulars in paras 5 (*c*) (i) and 5(*c*) (ii) and the charges in para 4(*cc*) are to be read with the particulars in para 5(*cc*) of the petition.

417. The allegations in para 5(*c*) (i) of the petition are that the same as the particulars set out in the previous paragraph 5(*bb*) (i) regarding the pamphlets issued by Sri. S. R. Umachagi, distributed by the Respondent No. 1 and his agents, all over the constituency as also the three articles in the issues of the Navanagarika similarly distributed all over the constituency by the Respondent No. 1 and his agents. In the Deshavani daily paper of Gadag, the decision taken at the meeting dated 2nd February 1962 under the presidentship of Sri. S. R. Umachagi was published on 3rd February 1962. So also, the said decision was published in the Navanagarika daily paper of Gadag on 3rd February 1962. In these publications the details of which are given in the next foregoing paragraphs ; but short of the religious symbols and the pamphlets themselves printed with the said religious symbols, an appeal was made to the Muslim voters in the name of religion and community to vote for the Respondent No. 1 and Miss. Mahishi.

418. The Respondent No. 1 has stated in para 31 of his written statement Ex. 36 that the allegations contained in para 5 (*c*) (i) of the petition are not true and that he is not directly or indirectly connected with the issue or distribution of any pamphlet alleged to have been issued by Sri Umachagi, and similarly he is not a party to the publication or distribution of any issue of the Navanagarika daily or the Deshavani daily. This Respondent has neither been a party nor a consenting party to any article appearing in any of the pamphlets or dailies.

419. The above allegation is spoken to by the Petitioner. P.W. 5, P.W. 15, P.W. 16, P.W. 17 and P.W. 60 and also by the Respondent No. 1, R.W. 29 and R.W. 35 and the relevant document is Ex. 201 a pamphlet issued during the election.

420. The Petitioner has given evidence that at the meeting of 2-2-1962, convened by Sri Noorani and presided over by Sri Haji Tajuddinsaheb Umachagi, it was resolved that all the Muslims as community should vote for the Respondent No. 1 and that pamphlets similar to Ex. 201 were distributed and the number '786' at the top of the pamphlet Ex. 201 denotes "Bismilla Hir-Rahiman Nir-Rahim" and that these words are used as a religious invocation among the Muslims and the crescent

and flags in Ex. 201 are Muslim religious symbols and that these symbols were used so that there might be binding force of Muslim religion and votes secured for the Respondent No. 1 and that the Muslims believe that if they violate that injunction, they would incur the displeasure of God and incur perdition. He has also given evidence that Haji Tajuddinsab Umachagi and Noorani are Muslims and Hajis were regarded as religious leaders, and pamphlets similar to Ex. 201 were distributed by the Respondent No. 1, R.W. 29 Noorani and R.W. 35 Umachagi throughout the constituency.

421. The above allegation is also spoken to by P.W. 5 Basappa Gadagin of Asundi, P.W. 15 Husensab Annigeri of Betgeri, P.W. 16 Budansab Nargund, P.W. 17 Ummarsab Attar and P.W. 60 Kalil. I have also dealt with their evidence while dealing with the allegations in para 5 (bb) (i) of the petition and also the evidence of the Respondent No. 1 and his witnesses on this point. I adopt the same in this allegations also.

422. The Petitioner has no personal knowledge about this allegation and the witnesses examined by the Petitioner on this point are shown to be partisan witnesses who are highly interested in the Petitioner, directly or indirectly, in one way or the other. I cannot accept their evidence as reliable.

423. The important question in so far as this allegation concerned is, whether the numeral '786'; the crescent and the stars are religious symbols and whether they had been used as religious symbols by the Respondent No. 1 or his agents or any other person with the consent of the Respondent No. 1 and whether the use of these symbols was made for the furtherance of the prospects of the election of the Respondent No. 1 or for prejudicially affecting the election of any candidate. The relevant pamphlet is Ex. 201.

424. It is mentioned in pamphlet Ex. 201 that on 2-2-1962, the Muslims of Gadag-Betgeri who met in large numbers under the presidentship of Haji Sayyad Tajuddinsaheb, and after a long deliberation, unanimously resolved that they should vote for the congress candidates, Sri K. P. Gadag for the Mysore Legislative Assembly and Smt. Sarojini Mahishi for the Parliament and get them elected by a large majority. A request has been made in this pamphlet that all Muslim voters should give their votes by a rubber stamp in the column of " a yoked pair of bullocks." That pamphlet has been signed by Haji S. R. Umachagi, as president of that meeting. In the pamphlet, stars, flags, crescent and the numeral '786' are printed as also a yoked pair of bullocks. It has been contended by Sri B. S. Patil, the learned advocate for the Petitioner that as soon as the numeral '786' comes before the eyes of any Muslims, whether literate or illiterate, that Muslim knows that the numeral stands for the Kalma " Bismilla Hir-Rahman Nir-Rahim " which means " In the name of Alla or God, the most benevolent and the most generous." He has also

contended that as soon as the above numerals and the above symbols were got printed in the pamphlet Ex. 201, there was a religious injunction to all the Muslims of Gadag-Betgeri and therefore, it was an appeal to the Muslims in the name of religion, the disobedience or non-compliance of which on the part of the Muslim voters was that they would be rendered objects of divine displeasure or spiritual censure. He has also further urged that by issuing the pamphlets similar to Ex. 201, in the name of God, the most beneficient and the most generous and with all the symbolic para-phernelia of the Muslim religion or Islam, the Muslims of Gadag-Betgeri were called upon to unanimously cast their votes in favour of the Respondent No. 1 and Smt. Mahishi the Congress candidates. He has contended that such an appeal will bind the conscience of every Muslim to vote for the Respondent No. 1 and Mahishi, because it was a religious appeal. He has contended that on deciphering the Ex. 201, there cannot be but an appeal in code language to all the Muslims to call upon them to vote unanimously to the Respondent No. 1 and Mahishi, the congress candidates in the name of Alla. This is an appeal with an inducement that one would be rendered an object of divine displeasure or spiritual censure and that in the name of God, the votes of the Muslims were sought for and thereby R.W. 35 Umachagi in the name of Alla brought the moral and spiritual conscience of the Muslims and that the appeal will also mean : " Vote for the Respondent No. 1 and Mahishi, I will promise you heaven in the name of the Almighty Alla and if you do not vote for them, you shall go to hell."

425. The Petitioner clearly states that the pamphlet Ex. 201 was issued by R.W. 35 Umachagi With referecne to Ex.201, attempts were made by the Petitioner to show that Ex. 201 was got published in Nagarika by the Secretary of the Taluka Congress Committee and that the Respondent No. 1 had phoned to P.W. 35 Hombali to publish the report of the Muslim meeting of 2-2-1962. Another attempt of the Petitioner has been that it was not R.W. 35 Umachagi who had paid the bill for the printing of the pamphlets similar to Ex. 201, but it was the Respondent No. 1 who had paid the printing charges of those pamphlets. This is a desperate attempt made by the Petitioner at later stage and this cannot be allowed in law in view of the specific pleadings in the petition.

426. Ex. 201 is clearly an appeal as admitted even by the Petitioner as containing a desire or wish on the part of R.W. 35 Umachagi and that it is not a command or hukum or a religious injunction. The Petitioner and all his witnesses have admitted that the printing of the numeral '786,' the stars, flags and the crescent are commonly used in issuing invitations. These symbols like the stars, flags and the crescent may have some religious importance, but according to the decision reported in 1964 Mysore Law Journal (Supreme Court's notes) 72, they do not come under Section 123 (3) of the R. P. Act. Agency of R.W. 29 and R.W. 35 to the Respondent No. 1, the consent of the Respondent No. 1 is neither alleged nor proved.

427. In a sense, the crescent, stars and the flags may be religious symbols like "Shri" or "Om" but they are also in practice used as auspicious signs. The evidence discloses that many muslims used the numeral '786'; crescent and stars and flags for auspicious things and there is evidence on record to show that R.W. 35 Umachagi even while communicating with non-muslims, was using the above numerals and symbols for auspicion, in his letter pads and envelopes during the natural course of things.

428. Ex. 309 is the article in the Nagarika daily got published by a section of the Muslims of the Gadag constituency during the election of 1962 in support of the Petitioner in his election. That article has been signed by 400 to 500 Muslims (refer evidence of P.W. 35 para 29) and the said article has been published in the Navanagarika (Ex. 309) which is dated 19-2-1962 and the adda Muslim meeting of 2-2-1962 convened by R.W. 29 and R.W. 35 has been referred to, and a reference has also been made to R.W. 35 Umachagi in that article. While referring to the adda meeting and to R.W. 35, these signatories to that article do not say or whisper anything about the religious appeal or religious injunction in Ex. 309 showing thereby that there was absolutely no religious appeal or injunction at all in the adda meeting of 2-2-1962, nor in the pamphlets issued similar to Ex. 201, though the signatories of that article refer to the publication of Ex. 201 as prakatana.

429. As already mentioned by me, the stars, the flags and the crescent used in Ex. 201 may be religious symbols of the Muslims, but I do not think that those symbols have been used as religious appeals or religious injunction with a view to bind or bring the moral or spiritual conscience of the Muslim voters. Those symbols have been used as signs of auspicion. I do not think that the numeral '786' is a religious symbol as that number does not seem to import any Muslim religious significance and the matter may be different if the Urdu equivalent to the numeral '786' namely, LΛY, is used. At any rate, there is no convincing material on record to show that the stars, crescent, flags and the numeral '786' had any effect on the Muslim voters. I am unable to accept the contention of the learned advocate for the Petitioner on this point.

430. Neither Noorani nor Tajuddinsab Umachagi had done anything wrong in holding the adda meeting of the Muslims. They tried to guard the interest of the Muslims in general and they had adopted the democratic method of ascertaining the wishes of the Muslim community in their own interest. The publication in Ex. 309 by a section of the Muslims of the Gadag constituency clearly shows that there was absolutely no religious appeal or religious injunction at all in that meeting of 2-2-1962 or in the distribution of the pamphlets similar to Ex. 201 and there is nothing wrong in any community calling a meeting and deciding in its own interest what attitude that community should adopt in the election. In the instant case, neither the Respondent No. 1 nor Smt. Mahishi is a Muslim and neither R.W. 29 nor R.W. 35 is a spiritual or religious head.

431. The Petitioner has no personal knowledge of this allegation in view of his verification to the petition and his personal knowledge, if any, cannot be believed on this point because of his verification to the petition. The witnesses for the Petitioner have been shown to be the Petitioner's supporters and how they are interested and how their evidence is unreliable. (refer my discussion with reference to the allegations in para 5(*bb*) (i) of the petition). R.W. 29 Noorani and R.W. 35 Umachagi have sworn that whatever they did, they did of their own and that the Respondent No. 1 had no hands either in the meeting itself or in the printing of the pamphlets similar to Ex. 201 and not even in the publication or distribution of those pamphlets. The evidence of the Respondent No. 1 also shows that he had no hand in the adda meeting of 2nd February 1962. He had no hand in the printing, in the publication and distribution of the pamphlets similar to Ex. 201. Therefore, I hold for the reasons stated above that the Petitioner has failed to prove the allegations mentioned in para 5(*c*) (i) of the petition.

432. *The next allegation of this issue is contained in para* 5(*c*) (ii) *the petition.*

433. The allegation contained in para 5(*c*) (ii) of the petition is that the picture of the Prime Minister of India was decorated and taken out in the procession in Gadag Betgeri along with the picture of the yoked bullocks in the election campaigneering procession, got up by the Respondent No. 1 on 20th February 1962. On the same day, that is on 20th February 1962, another procession of women only was gotup by the Respondent No. 1 in the Sahapurpeth area of Gadag, who went round with a decorated picture of Mahatma Gandhi and with National Flags, shouting slogans in Gandhi's and Sri. Nehru's name and seeking votes for the congress candidates. On 12th February 1962, when a procession was got up by the Respondent No. 1, in which Sri. S. Nijalingappa was taken out in the procession, the open car in which Sri. S. Nijalingappa was standing up, was decorated with National Flags and thus the National Flags were made use of. In the temple of God Shankar at Betgeri, the picture of yoked bullocks was decorated and exhibited prominently at the entrance of the temple, seeking votes for the congress candidates, throughout the period available for canvassing. Similarly, in the temple of God Veerabhadra, under the idols of Laxmi and Saraswati, the picture of yoked bullocks was decorated and exhibited prominently seeking votes for the congress candidates during the entire period available for canvassing. These acts were so cleverly done that in the picture of yoked bullocks also looked like theophanic symbols of Nandi, clearly calculated to rouse the feelings of religious devotion for Basavanna, the incarnation of Nandi and the great reformer of the Lingayat religion. These two temples claim vast number of men and women voters and thus there was this sort of appeal constituting corrupt practice. On 26th January 1962, the Respondent No. 1 hoisted the National Flag on the Republic Day celeberation on behalf of the Gadag Taluka Congress

Committee of which he is the President and addressed the meeting at which this ceremony was held and straight way appealed to the audience for votes for himself and for Miss. Mahishi, for whom he acted as canvassing agent.

434. The Respondent No. 1 has stated in para 32 of his written statement Ex. 36 that the allegations contained in para 5(*c*) (ii) of the petition are not true and it is false to say that the procession in Gadag and the procession in Sahapurpeth were by this Respondent ; and this Respondent had no sort of connection at all with the bringing about those procession. They were taken out by the people out of their admiration for and interest in the congress. Similarly, in the case of procession of 12th February 1962, this Respondent had no hand at all. This Respondent does not admit the details alleged, and he cannot be held responsible for the acts of other people without his consent. Further, the alleged decorations in the temples of Shankar and Veerabhadra as alleged are denied. It is true that this Respondent hoisted the National Flag on the Republic Day, but he made no reference to the election on that day.

435. In the instant case, the political party namely, the Congress Party had taken active part in the election of the Respondent No. 1, as could be seen from the records and therefore I consider that it is my duty to consider the legal status of the Political Parties in general with respect to the elections.

436. It has been stated that there is undoubtedly no harm in Political Parties or associations so long as they confine themselves to legitimate ends, and there is nothing to be said in the abstract against associations for the promotion of the views of a political party. People have a right to associate together in order to pursuade their fellow countrymen to adopt those views of politics which they themselves are pursuaded,are the best and most wholesome , and so long as, in so doing, they resort solely to things which are likely to produce an effect upon the reasons of those to whom they are addressed, no fault whatever can be found with their action.

437. In the law relating to elections, agency differs widely from Common Law Agency both as to the facts from which law infers the relation and the consquences that flow from it when established. In Wakefield's case (2' O. M. and H. page 202), it was said, " By Election Law, the doctrine of agency is carried further than in other cases...."

438. It must be remembered that the expression " agency " has nowhere defined in the R.P. Act, and Section 79(*i*) of the R. P. Act, which contained the definition of agent has been deleted from the R. P. Act. In the R. P. Act, two expressions have been used and those expressions are : " agent " and " candidate " in Sections 99, 100 and 123 of the R.P. Act.

As no specific definition of an agent is given in the R. P. Act, we have to fall back upon the definition of agent in the Law of Contract.

439. Under Section 182 of the Indian Contract Act, an "agent" is a person employed to do any act for another or *to represent* another in dealing with *third persons*. The person for whom such act is done, or who is so represented, is called "the principal". So, an agent is a person employed by another to act for him and on his behalf, either generally, or in some particular transaction, and the authority may be actual or it may be implied.

440. I am now trying to find out the legal character between a candidate in an election and a Political Party which has given him the ticket and to find out their connections legally in regard to the Law of Agency. It is easy to state the principles, but the difficulty lies in their applications and it is difficult to deduce definite rules applicable to all cases. Agency is a result of Law to be drawn from the facts of a particular case and from the acts of individuals or associations, and it has to be inferred from the circumstances and the conduct of the parties. No appointment as agent, or authorisation or declaration in writing, is necessary.

441. Agency must be distinguished from other legal relations. It should, however, be remembered that in every transaction of agency, three parties are involved, namely, (1) the agent, or person representing another, (2) the principal, or the person represented and (3) a third party with whom the agent deals. Agency is distinguished from the relation between master and servant. Confidence is a distinguishing feature between an agent and an ordinary servant. The power to exercise his own discretion given to an agent is only necessary result of the confidence and varies with it. The greater the Confidence reposed, the greater is the power which the agent can wield. A servant has, ordinarily, no discretion and he must only do what his master orders him to do, and in the same way and to the same extent as he is ordered. As soon as some confident is reposed in him, and he is given some discretion, his position changes to that of an agent, holding him responsible as such to the extent he was confided in. A master retains the power of controlling the work; he not only prescribes to the servant the end of his work, but directs, or at any moment may direct, the means also.

442. A servant is a person who works under the supervision and direction of his employer and whose orders he must obey from time to time. He is subject to the command of his master as to the manner in which he should do his work. In the case of an agent, the dominion of the principal over his agent is not complete and where the agent has been employed for doing some act, the principal has only the right to require that the act shall be done, he cannot direct the means for doing the act.

443. Let us bear in mind the above principle when I consider the legal position between a candidate in an election and a political party or association in relation to the Law of Elections.

444. When an applicant applies for a party ticket to a political party or association, he sends his application to that political party praying that he may be given a ticket from that party to represent that party in an election contest and while so applying, he (or she) also pays the necessary deposit amount and an additional amount to that party for propaganda work, in the event he or she is given a party ticket to contest an election. The political party or association concerned, may or may not give him or her a ticket and that depends upon the facts and circumstances of each particular case and the discretion whether to give him or her a ticket depends entirely on that political party.

445. Before he or she is given a party ticket by that political party, he or she is bound to comply with certain rules and regulations prescribed by that political party and that is a condition precedent to his or her being given a ticket by that political party, as for example, in the instant case, the applicant for a congress ticket has to agree or at any date be ready and willing to comply with the conditions embodied in the application forms prescribed by the congress party similar to Exs. 284 and 285. It should be remembered that even after the applicant is given a party ticket to contest an election, the applicant is bound to comply with the rules and regulations prescribed by that political party, otherwise he or she will not be given a party ticket to contest an election. Let us assume, that the applicant is given a ticket by that political party.

446. Upto this stage, the question we have to consider is, what is the legal relationship between the applicant and the political party in relation to principal and agent. In my opinion, the relationship that exists between the applicant and the political party is analogous to the relationship of master and servant, because the political party as a master retains the power of giving the ticket to the applicant and giving directions to the applicant who has no discretion in the matter and the applicant is bound to carry out the directions of the political party which has given him the ticket and the applicant, ordinarily, has no discretion and must do that which the political party orders or directs him to do and in the same way, and to the same extent as he is ordered or directed to do a particular act. So, applying the Law of Agency, the political party is the principal and the applicant is the agent employed by the political party to represent the political party in an election in dealing with third persons, namely the Returning Officer to whom the applicant should file his nomination paper to contest a particular election and the political party for whom such act is done or who is so represented, is the principal' and in the words of Section 182 of the Indian Contract Act, the applicant (who is also the candidate in an election) is the agent of the political party which gave him the party ticket to contest a particular election. It should be

remembered at this stage that even after giving a party ticket to a candidate, apart from the applicant (candidate) being interested in the success in that election, the political party which has given him a party ticket, is equally interested, perhaps more interested in his success in the elections than the candidate himself, and therefore, the political party as the master or principal will still have t :e arrangements like propaganda, procession, etc., for the success of that candidate in that election, to maintain the political prestige of that political party.

447. Suppose, that nomination paper of the candidate or the applicant is accepted by the Returning Officer, then the question is whether the relationship of "principal" and "agent" that existed between the political party and the applicant-candidate continues or ceases, the moment the nomination paper of the applicant (or candidate) is accepted by the Returning Officer. In my opinion, even after the acceptance of the nomination paper of the candidate by the Returning Officer, the political party which gave the candidate the party ticket for contesting an election, continues to be interested in the success of the candidate to maintain the party's prestige and the relationship that existed between the political party and the applicant (candidate) as principal and agent respectively will continue even after the acceptance of the nomination paper of that candidate who is the candidate in the words of the R.P. Act; and that relationship is that of the principal and the agent in which the political party continues to be the principal and the candidate continues to be the agent of the political party, because there is absolutely no prohibition in the entire R.P. Act prohibiting a political party in working for furthering the prospects of a candidate in an election set up by it, and there is no bar in the R.P. Act that a political party should not set up its official candidate. Even in the election petition, in para 1 of the petition, it has been stated by the Petitioner that the Petitioner was an independent candidate un-attached to any political party, while the Respondent No. 1 was the official candidate of the Congress Party with Respondent No. 2 as dummy for the Respondent No. 1 and that the Respondent No. 3 was also an independent candidate un-attached to any political party and the Respondent No. 4 was the official candidate of the Jana Sangh. This itslef is an indication of the fact that the existence of a political party has been recognised.

448. The terms and conditions or the agreement entered into between the political party and the candidate at the time of filling an application by the candidate for a party ticket, holds good even after the acceptance of the nomination paper of that candidate by the Returning Officer, and those terms and conditions can legally be enforced in a Court of Law either by the candidate or by the political Party concerned whoever is aggrieved, because those terms and conditions are not opposed to public policy and they are not wagering contracts.

449.. Even after the acceptance of the nomination paper of the candidate, the political party which gave him a party ticket will continue to retain the power of controlling the prescribed work and at any moment may direct the work to be done. But, as soon as the candidate is given a party ticket, some confidence is reposed in the candidate by the political party and the position of the candidate changes from that of a servant to that of an agent, by which the candidate is given some discretion, and he may be held responsible as such to the extent he was confided in. An agency is a contract of employment for the purpose of bringing another in relation with a third party, and confidence forms the basis of agency, relying upon the agents integrity, fidelity and capacity which are the moving considerations in its creation. The reposing of the confidence is a sufficient consideration for the contract of agency between the political party and the candidate in an election. During the continuation of the election contest, the political party which gave a party ticket to the candidate will continue to be the principal of that candidate who remains as agent even during the period of election contest.

450. As a political party retains, as the principal, the power of controlling the election work, the election propaganda, the election programme, retaining the power to exercise its own discretion in maintaining its own prestige and to see that the candidate set up by it is successful in the election contest, and as the success of the candidate set up by it in an election is virtually its own success, there is nothing wrong in a political party in forming a Chunavanaprachar Samiti or a Propaganda Committee from out of the members or workers of its own organisation or even co-opting members to the Propaganda Committee from outside its organisation or association as and when necessary. The arrangement of the procession, the arrangement for propaganda and the election campaineering is mostly the work of a political party not only to get individual's success of the candidate set up by it, but also to maintain its own prestige as a Political Party in the election contest. For the aforesaid reasons, I am of the view that Political Party's position is that of a principal and a candidate set up by a political party continues as an agent or as a representative of that political party in dealing with the third persons such as the Returning Officer.

451. So, bearing in mind the above relationship between a political party and a candidate in an election, I will now proceed to discuss the above allegation and other allegations mentioned in the petition.

452. The particulars in para 5(*c*) (ii) of the petition consists of a bundle of allegations which can roughly be classified into six parts. They are as follows :—

Part (I) :—On 20th February 1962, the picture of the Prime Minister of India was decorated and taken in procession in Gadag-Betgeri along with the picture of the yoked bullocks in the election campaigneering procession got up by the Respondent No. 1.

Part (II) :—On the same day, another processions of women only was got up by the Respondent No. 1 in the Sahapurpeth area of Gadag which went round with a decorated picture of Mahatma Gandhi and with National Flag shouting slogans in Gandhi and Nehru's name and seeking votes for the congress candidates. (It is stated in the petition National Flag, but congress flags have not been mentioned in the petition).

Part (III) :—On 12th February 1962, when a procession was got up by the Respondent No. 1 in which Sri. Nijalingappa was taken out in procession in the open car, in which Sri. Nijalingappa was standing, was decorated with National Flags and thus National Flags were made use of.

Part (IV) :—In the temple of God Shankar at Betgeri, a picture of the yoked bullocks were decorated and exhibited prominently at the entrance of the temple seeking votes for the congress candidates throughout the period available for canvassing.

Part (V) :—Similarly, in the temple of God Veerabhadra, under idols of Laxmi and Saraswati, the picture of the yoked bullooks was decorated and exhibited prominently seeking votes for the Congress candidates, during the entire period available for canvassing. These acts were so cleverly done, that in the picture of the yoked bullocks also looked like theophanic symbols of Nandi, clearly calculated to rouse the feelings of the religious devotees for Basavanna, the incarnation of Nandi and the great reformer of the Lingayat religion.

Part (VI) :—The Respondent No. 1 hoisted the National Flag on the Republic Day celebration on behalf of the Gadag Taluka Congress Committee of which he is the President and addressed the meeting at which this ceremony was held and straight way appealed to the audience for votes for himself and for Miss. Mahishi for whom he acted as a canvassing agent.

453. Now I will proceed to consider the six parts of the above allegations separately.

454.

Part I.

The men's procession of 20th February 1962 in which the picture of the Prime Minister was decoraied and taken in procession which was got up by the Respondent No. 1.

455. The allegation regarding the procession of men that was taken on 20th February 1962 is already been dealt with under Issue No. 1 while considering the allegations mentioned in para 5(*a*) (xi) of the petition. This part of the allegation is spoken to by the Petitioner, P. W. 30 and P. W. 40 and also by the Respondent No. 1 and R.W. 11 and the relevant documents are at Ex. 198 (Navanagarika daily) and Ex. 228 (Nagarika daily).

456. The evidence of the Petitioner about the men's procession is hearsay, as he did not attend the procession. His verification to the petition itself will disclose that it was only information and not personal knowledge. The Petitioner says that P. W. 30 is the person who gave the information about the procession and P. W. 30 is silent about it in his evidence, as could be seen from his evidence. P. W. 40 has a new story of the Respondent No. 1 coming to his shop and P. W. 40 is not named in the petition and his evidence therefore cannot safely be accepted. (1959 Mysore Law Journal 390). The reports Ex. 198 (Navanagarika) and Ex. 228 (Nagarika) are to the effect that the procession was a propaganda in favour of the Congress in which the persons concerned took part spontaneously.

457. In so far as the allegation in part I is concerned, the Petitioner states that this procession was got up by the Respondent No. 1 and it is said that it was for the congress candidates. As a political party, the congress is entitled to make its own arrangements to maintain its own prestige in an election and the consent of the Respondent No. 1 is neither alleged nor proved by the Petitioner. No other names are mentioned in the petition. There is no evidence that it was the Respondent No. 1 who got up the procession. The Respondent No. 1 has denied this allegation. R.W. 11 Neelakanthappa has given evidence that people, out of their own enthusiasm, had arranged for that procession.

458. The next question which I have to consider in this connection is, whether the picture of Pandit Nehru is a National symbol or National emblem.

459. It has been contended on behalf of the Petitioner that the pictorial representation of Pandit Nehru is an emblem and therefore a kind of symbol ; and symbol is wider in its meaning than emblem and a symbol will include an emblem, but an emblem will not include a symbol. He contended further that the picture of Pandit Nehru was a symbol irrespective of the fact of election, because he was the Prime Minister of India during the period of election and his picture was a symbol so long as he was the Prime Minister of India.

460. He has also urged that Nation is something which has well-defined borders and which has a State and a Government. The head

of the State in India is the President of India and the head of the Government in this country is the Prime Minister of India and that it is Prime Minister who Governs and runs the Government and therefore, he is necessarily be a National figure. He urged that the Government, cannot be dis-associated with the Nation and there cannot be a Prime Minister without a Government and that when we speak of the Prime Minister of India, we speak of his Government and hence we speak of the Nation.

461. He has further urged that the picture of Pandit Nehru is a National symbol or a National emblem, because the expressions "The Prime Minister of India" are included in the schedule to the Emblems And Names (Prevention of Improper Use) Act, 1950. He has invited my attention to Section 3 of that Act which provides that notwithstanding anything contained in any law for the time being in force, no person shall, except in such cases, and in under such conditions as may be prescribed by the Central Government, use or continue to use, for the purpose of any *trade, business, calling or profession*, or in the title of any patent, or in any trademark or design, any name or emblem specified in the schedule or any colourable imitation thereof without the previous permission of the Central Government or of such Officer as may be authorised in this behalf by the Central Government.

462. The learned Advocate for the Petitioner also contended that the office of a Member of the Legislative Assembly is an occupation or profession, because as a sitting M. L. A., the Respondent No. 1 got his daily allowances, salaries etc., and therefore the office of the M. L. A. is a profession. He also contended that the expression "calling" means "vocation" and the term "vocation" means "a way of living or the sphere of activity to which one has been called or for which one has special fitness," and also means "ones occupation, business or profession" and he therefore urged that the instant case falls under the Emblems and Names Act of 1950.

463. In the schedule to the Emblems and Names Act of 1950, the third item of that schedule refers to the Indian National Flag and the item 9-A of that schedule reads thus :—

"The name or pictorial representation of Mahat ma Gandhi or the Prime Minister of India". He, therefore, contended that the picture of Pandit Nehru is a National symbol or National emblem and that picture, having been used by the Respondent No. 1 in that procession during the election in furtherence of the prospects of his election, is therefore a corrupt practice within the meaning of Section 123(3) of the R. P. Act.

464. The Emblems and Names (Prevention of Improper Use) Act, 1950, is an Act enacted to prevent the use of certain emblems and names

for professional or commercial use. The expression "emblem" means under that Act of 1950, any emblem, seal, flag, insignia, coat-of-arms, or pictorial representation specified in the schedule to that Act. That definition has been given for the purpose of the Emblems and Names Act and not for the purpose of any other Act such as the R. P. Act, because absolutely no reference has been made either in the Emblems and Names Act or in the R. P. Act.

465. The contention put forward before me by the learned advocate for the Petitioner is that the picture of Pandit Nehru represents the Indian Nation and therefore, it is a National symbol or a National emblem. Something which represents Pandit Nehru, cannot be a National symbol, because it cannot be said that by merely representing Pandit Nehru, a symbol or an emblem would become a National symbol or emblem. It cannot be said that every picture of Pandit Nehru whatever is posture in it, would represent the Indian Nation.

466. In this connection, it is important to note that Section 123 (3) of the R. P. Act itself gives an example of a National symbol, namely, the National Flag about which full details are known. The National Flag is recognised as National and wherever it is flown, it connotes the idea of the presence and representation of the Indian Nation. This is a principle well recognised in International relations. The National Flag is thus a National symbol, because wherever it exists, the Indian Nation is represented there. Further the National Flag has acquired its characteristic of being a National symbol, by a resolution of the Constituent Assembly. In our country, so far, the character of being a National symbol has been acquired by only the National Flag and the National Anthem and that was by resolutions of the Constituent Assembly. The picture or portrait of Pandit Nehru has nowhere received such recognition.

467. People may keep the picture of Pandit Nehru, because they rever him and have great respect and regard for him, because Pandit Nehru was one of the champions and fighters of the Indian freedom and he was one of the architects of Modern India. But, by keeping his picture, it cannot be said that there is any intention to signify that the Indian Nation as such is present or represented wherever his picture happens to be. I am, therefore, of the opinion that the picture of Pandit Nehru is not a National symbol or a National emblem in the sense it represents the Indian Nation.

468. It was also contended on behalf of the Petitioner that because the name or pictorial representation of Mahatma Gandhi or the Prime Minister of India are included in the schedule to the Emblems and Names (Prevention of Improper Use) Act, 1950, the picture of the Prime Minister of India and that of Mahatma Gandhi are National symbols or National emblems and therefore the using the picture of Pandit Nehru by the Respondent No. 1 in that procession during the election is a corrupt practice under Section 123 (3) of the R. P. Act.

469. I do admit that the names or pictorial representation of Mahatma Gandhi or the Prime Minister of India have been included in the schedule to the abovementioned Emblems and Names Act of 1950 by virtue of the amendement made to that Act in 1959. But it must be remembered that the expressions used in that Act are, "The Emblems and Names (Prevention of Improper Use) Act" and not "The National Emblem and Names (Prevention of Improper Use) Act." The names of pictorial representation of Mahatma Gandhi or the Prime Minister of India have been included in the schedule to the Emblems and Names Act of 1950 only for the purpose of that Act and inclusion of those names has also absolutely nothing whatsoever to do either with the National symbols or the National emblems appearing in Section 123 (3) of the R. P. Act. It is also significant to note that absolutely no reference has been made in the Emblems and Names Act of 1950 to the R. P. Act and the R. P. Act in its turn also does not refer to the Emblems and Names Act of 1950. Further, it has been held in A. I. R. 1950 Alahabad 427, A. I. R. 1959 Alahabad 264, A. I. R. 1961 Mysore 106 and 1961 Mysore Law Journal 107 that the portrait or bust of Mahatma Gandhi cannot be considered to be a National symbol for the purpose of sub-section (3) of Section 123 of the R. P. Act. Therefore, I hold that the Emblems and Names (Prevention of Improper Use) Act of 1950 has no application to the R. P. Act and the picture of Pandit Nehru is not a National symbol or National emblem within the meaning of Section 123 (3) of the R. P. Act.

470. The Petitioner has not only failed to show that the picture of Pandit Nehru is a National symbol or a National emblem, he has also failed to establish that the picture of Pandit Nehru was used by the Respondent No. 1 in that procession, and that his election has been prejudicially affected thereby.

471. Therefore, for the reasons stated above, I hold that the Petitioner has failed to prove Part (I) of the allegations mentioned in para 5 (c), (ii) of the petition.

Part (II) Women's procession of 20th February 1962.

472. This allegation about the women's procession is spoken to by the Petitioner, P. W. 28, P. W. 29 and P. W. 30 and also by the Respondent No. 1, R.W. 13 and R.W. 16 and R.W. 33. The relevant document is Ex. 198 (Navanagarika) and Ex. 228 (Nagarika).

473. The Petitioner has given evidence that in the issue of Navanagarika dated 22nd February 1962, (Ex. 198), the procession of 20th February 1962 is reported and the procession of women on that day is also reported in that paper and that they had taken out the picture of the Prime Minister and Mahatma Gandhi at that time ; that there was also

National Flag in the procession and there were slogans of Nehru-ki-jai and Gandhi Maharaja-ki-jai. He has also given evidence that in Ex. 198, the reference to the photo of Sri Nehru which he (the Petitioner) has mentioned above does not appear in the report of the procession of the women. He has also given evidence that Mahaboobsab and Dr. K. V. Chintamani told him about this photo being taken in the procession of women.

474. P. W. 28 Fakkiravva has given evidence that about two days before the polling day, Sosimath Nagamma, Sivappa Kubasad and the Respondent No. 1 had come to her house and she was told that there would be a procession of women and that all should come at about 7 p.m. Accordingly she went there at about 7 p.m. to the Veerabhadra temple and that women and children took out a procession from there with the photos of Gandhi, Sri Nehru and the picture of Basavanna and that she was holding the photo of Gandhiji and one Sugalabai had held the photo of Sri Nehru, Sosimath Nagamma had held the picture of the pair of bullocks and other women had held flags of Asoka Chakra and wheel.

475. P. W. 29 Sugalabai has given evidence corroborating the evidence of P. W. 28 on this point. P. W. 30 Sivanagouda Kariyappanavar has also given evidence that about two days prior to the election, there was a procession of women in Sahapurpeth and he has given other evidence corroborating the testimony of P. W. 28 on material particulars on this point except he has used the term Rashtra-Dwaja.

476. The Respondent No. 1 has given evidence that there were two processions at Gadag, one procession was of farmers and cartsmen who were plying carts for hire and the other procession was of Akkanabalaga of Sahapurpeth which was of women. He has given evidence that the first procession was spontaneous and not at the bidding of anyone and that he had no connection with these processions. He has also given evidence that what P. W. 28, P. W. 29 and P. W. 30 have stated in their evidence about procession is false and that P. W. 30 was the polling agent of the Petitioner. R. W. 13 Sivappa Kubasad has given evidence that he had not gone to call any women for that procession with Smt. Nagamma and R. W. 16 Siddalingayya Hosmath has given evidence that P. W. 28 Fakkiravva and P. W. 29 Sugalabai go for the work of the society in cotton seasons and that the husband of P. W. 28, one Gurubasappa and the husband of P. W. 29, one Mahadevappa are clerks in the Gadag Cotton Sale Society. R. W. 33 Anasuyabai has given evidence that there was a procession of ladies about two or three days prior to the polling day and that procession started from Sahapurpeth at Gadag and that because Smt. Sarojini Mahishi was a candidate, they (meaning this witness and others) had arranged for the women's procession. She has also given evidence that she was a Municipal Councillor during the year 1962 and that she and others had propagated to vote for the congress candidates.

477. The allegation is that the procession of women was got up by the Respondent No. 1 and no names have been mentioned in the petition. The names of Mahaboobsab and Dr. Chintamani have been spoken to by the Petitioner in this connection in his evidence and those two persons have not been examined by the Petitioner . P W. 46 P. V. Chintamani has been examined by the Petitioner, but P W. 46 is not Dr. Chintamani named by the Petitioner in his evidence. In Ex. 198 (Navanagarika), there is a report about the womens' procession and it is mentioned in that report that the women had their procession of their own enthusiasm and free will with a view to make propaganda for the congress. No picture of Mahatma Gandhi, Pandit Nehru or a mention of National Flag has been reported in that women's procession.

478. P. W. 28 Fakkiravva has deposed that she does not take part in election ; that she has only seen the Respondent No. 1 and R. W. 13 and that she is not a friend of Smt. Nagamma and yet she says that she took part in the procession. The names of P. W. 28, P. W. 29 and P. W. 30 are neither mentioned in the petition nor spoken to by the Petitioner in his evidence and hence, the evidence of these witnesses cannot safely be relied upon. (1959 Mysore Law Journal 390). These witnesses appear to be interested witnesses.

479. In the press report of the women's procession, no mention is made of the National Flags. The petitioner also states that no reference in any of the reports have been made of National Flags. P. W. 28 Fakkiravva says that some congress flags or National Flags were used. She is an unreliable witness. She does not know the persons who she alleges had come to call her. In addition to this, P. W. 29 Sugalabai admits that she cannot distinguish the wheel from Ashoka-Chakra. P. W. 30 clearly admits that by "Rashtra Dwaja" he means Congress Flag. None of these witnesses has been examined in the petition and the husbands of Fakkiravva and Sugalabai are the clerks in the Cotton Sale Society of which the Petitioner is the Managing Director.

480. The evidence of these witnesses about the picture of Pandit Nehru, Mahatma Gandhi and National Flags are all unreliable and hence I reject the evidence of the Petitioner and his witnesses on this point and I hold that the Petitioner has failed to prove the particulars mentioned in this part of the allegation mentioned in para 5(c) (ii) of the petition.

Part (III).

481. *Sri Nijalingappa's procession of 12th February* 1962.

The particulars of this part of the allegation is spoken to by the Petitioner, P. W. 18, P. W. 21, P. W. 35, P. W. 41, P. W. 42, P. W. 46, P. W. 65, P. W. 68 and also by the Respondent No. 1, R. W. 8, R. W. 13, R. W. 15, R. W. 19, R. W. 22, R. W. 25, R. W. 30 and R. W. 35. The

relevant documents are the newspaper announcements of the procession reported in Ex. 166, Ex. 188 and Ex. 220 and the reports of the procession reported in Ex. 167, Ex. 189 and Ex. 221.

482. The Petitioner has given evidence that in the procession of 12th February 1962, there were in the open car, Sri Nijalingappa, Sri Hallikeri, the Respondent No. 1 and four others.

483. P. W. 18, Jivanasa Kabadi has given evidence that he knows about the procession of 12th February 1962 which was of Sri Nijalingappa and Sri Hallikeri and that they had come for election propaganda for the Respondent No. 1 and there was a Congress Flag in front of the procession and there was a National Flag on the car, besides floral decoration and the flag had Ashoka Chakra. He has also given evidence that there were about 50 to 60 gaslamps which belong to P. W. 41, Dongarisab and that he (P.W. 18) met the Petitioner the next day after the procession and told him about all this. Sri Nijalingappa's procession is also spoken to by P.W. 21, Nagappa Tukka, P.W. 35 Hombali, P.W. 41 Dongarisab, P.W. 42 Mayappa Koravar, P.W. 46 Padachar Chintamani, P.W. 65 Gangaram Doddamani and P.W. 68 Sivappa Bandi.

484. The Respondent No. 1 has given evidence that Sri Nijalingappa and Sri Hallikeri had come to Gadag during the election period and that they were invited by the Congress Committee; that there was a procession then which had been arranged by the congress and prominent citizens of Gadag and that he (Respondent No. 1) had no hand in the arrangement of that procession and he had not spent any money for the procession. He has also given evidence that Sri Nijalingappa, Sri Hallikeri and the driver were sitting in car and neither himself nor Sri Haji Tajuddin Umachagi was sitting in that car, and that the congress flag had been fixed to the bonet of that car and it is not true that National Flag was fixed on that car.

485. R.W. 8 Iswarappa Pattanashetty has given evidence that Sri Nijalingappa's procession at Gadag during the election period was arranged by the Congress Committee. R.W. 13 Sivappa Kubasad, a member of the M.P.C.C., has given evidence that he took part in arranging that procession and that the Respondent No. 1 had no hand in arranging that procession and that it was the Congress Flag that was used in that procession and that no National Flag was used in that procession and that there was no reason to use it. The above evidence is also corroborated by the evidence of R.W. 15 Bimappa Chapparamani, R.W. 19, Fakkirappa Mulgund, R.W. 22 Chanabasawami Hiremath, R.W. 30 Tipusing Rajaput and R.W. 35 Umachagi.

486. The announcements in the newspapers Exs. 166, 188 and 220 and the newspaper reports of Sri Nijalingappa's procession reported in

Ex. 167, Ex. 189 and Ex. 221 clearly show that it was the congress party that had invited Sri Nijalingappa and not the Respondent No. 1. There is material to show that it was the Chunavana Prachar Samithi of which R.W. 22 Chanabasawami Hiremath was the Chairman and R. W. 19 Fakkirappa Mulgund a Member and with the co-operation and active assistance of the public, that procession had been arranged. The hugeness of that procession was due to enthusiasm of the public and no money was paid by the Respondent No. 1 nor was the procession got up by him as alleged.

487. None of the witnesses examined by the Petitioner on this point has been mentioned in the petition, except Dongarisab whose name has been given in the schedule (at page 23 of the petiotin) in the particulars of the date 20th February 1962 and Dongarisab's evidence is contrary to the schedule or tabular form given in the petition.

488. Such processions were the ordinary course of things during the election, as in the instant case, particularly when the contest was between the congress candidate, namely, the Respondent No. 1 and the dissident congress candidate, namely the Petitioner.

489. The petition does not refer to the Respondent No. 1 and Haji Tajuddinsab Umachagi sitting in the open car. There has been improvement in the evidence. In the petition, it was the car which was decorated with garlands and National Flags and Ex. 167 (Deshavani daily paper), dated 13th February 1962 also refers to the National Flag. It is admitted by the Petitioner's witness, P.W. 35 Hombali, that Rashtra Dwaja also means Congress Flag. The expressions 'Rastra-Dwaja' used in Deshavani Ex. 167 has been translated into "National Flag" by the Petitioner. Admittedly, there were congress flags in that procession and Deshavani paper is silent above the congress flags. The editor of Deshavani paper has sworn that the report as "Rastra Dwaja" was a mistake and that the reporter must have used it for the congress flag (also refer the evidence of P.W. 35 Hombali, para 30, page 22; evidence of P.W. 30, para 6 at page 4 regarding Rashtra Dwaja). The publication in Ex. 189 (Navanagarika) and Ex. 221 (Nagarika) do not refer to the National Flags, though details of Sri Nijalingappa's procession are given.

490. P.Ws. 41, 42, 65 and 68 do not speak to the National Flag nor to the presence of Respondent No. 1 and R.W. 35 Umachagi sitting in the car. It is only P.W. 11, P.W. 18, P.W. 21, P.W. 35 and P.W. 46 who speak about it. Those witnesses who have spoken to about it are all highly interested and unreliable partisan witnesses, and hence, their evidence on these points cannot be accepted and cannot be acted upon.

491. Regarding the expenses, P.W. 41 Dongarisab who is contradicted by the tabular form at page 23 of the petition (in that tabular form

the expenses of Dongarisab is given against the date 20th February 1962 when the procession of Sri Nijalingappa was on 12th February 1962) and this P.W.41 Dongarisab gets benefit admittedly from the Municipality of which the President is P.W. 34 Kanavi who is a strong supporter of the Petitioner during the election. The evidence of P.W.65 Doddamani (tangawala) is also unreliable as could be apparent on a perusal of his evidence.

492. P.W. 68 Sivappa Bandi is the only person who is examined on the point of hiring oxen for the procession. P.W. 68 is from a distant village and according to him, there were nine other men from his village engaged for that procession and none of them has been examined by the Petitioner.

493. To show that the Resopndent No. 1 had not got up Sri Nijalingappa's procession and to show that it was the Congress that had arranged Sri Nijalingappa's procession, there are two admissions made by the Petitioner in his evidence. In page 46 of his evidence, the Petitioner has given evidence that the Congress carries on propaganda for those candidates who ask for and think it necessary. In para 75 at page 71 of his evidence, the Petitioner has deposed that the Congress is an institution above caste which had brought freedom to our country and that the congress would naturally support the candidate to whom it had given ticket and that similarly, if he (the Petitioner) had been given the congress ticket, he (the Petitioner) would have been supported by the congress. Apart from his evidence, there are other evidences in the case to show that the Respondent No. 1 had not got up Sri Nijalingappa's procession. This apart, there is no convincing evidence of a reliable nature adduced by the Petitioner and his witnesses to show that it was the Respondent No. 1 who had got up Sri. Nijalingappa's procession of 12th February 1962.

494. Nobody had taken notice of the flags during that procession. Even P. W. 35 Hombali had not mentioned it in his Nagarika daily, thereby showing that he had not taken note of the flags at all and so also the other papers had not taken note of the flags except Deshavani daily. There is absolutely no evidence on record adduced by the Petitioner to show that the appeal was made in furtherence of the prospects of the Respondent No. 1's election or for prejudicially affecting the election of the Petitioner. I am not convinced with the evidence of the Petitioner and his witnesses on this point.

495. For the reasons stated above, I hold that the Petitioner failed to prove the particulars of Part (III) of the allegations mentioned in para 5(*c*) (ii) of the petition.

Part (IV).

496. *Allegation with respect to Shankarlinga temple.*

This allegation is spoken to by the Petitioner and the Respondent No. 1, and there are no documents relied upon by the parties.

497. The Petitioner has given evidence that Basavanna's picture was decorated to appear as Nandi in Shankar Linga temple in Betgeri and that Basavanna was in the form of a pair of yoked bullocks and that it was written at one place, " Vote for the Congress," and at another place as, " Vote for the Respondent No. 1 and Miss Mahishi " who were the congress candidates, and this was done throughout the period of election. He has also given evidence that he has not personally seen the above decoration in the Shankarlinga temple and that one Hanamantappa Mayagiri and many others had told him about Shankarlinga temple being used in that manner.

498. The Respondent No. 1 has given evidence that it is not true that Shankarlinga temple had been decorated with posters announcing the candidature.

499. The Petitioner has no personal knowledge about this allegation in view of his evidence and in view of his verification to the petition. None of the witnesses has been named in the petition and no witness has been examined by the Petitioner on this point. The name of Hanamanaappa Mayagiri is referred to by the petitioner in his evidence and he has not been examined by the Petitioner and absolutely no reason is forthcoming why he was not examined by him. The Respondent No. 1 has sworn that he had not decorated the said temple with posters. There is absolutely no evidence adduced by the Petitioner on this point and the solitary evidence of the Petitioner is highly interested and cannot be relied upon.

500. For the reasons stated above, I hold that the Petitioner has not proved the particulars of this part of the allegation mentioned in para 5(*c*) (ii) of the petition.

Part (V).

501. *Allegations about the Veerabhadra temple.*

This allegation is spoken to by the Petitioner, P. W. 24, P. W. 28, P. W. 29 and P. W. 48 and also by the Respondent No. 1, R. W. 10 and R. W. 16. The documents relied upon are Ex. 419 (negative of the photograph), Ex. 420 (copy of the photo) and Ex. 422 (summons).

502. The Petitioner has given evidence that Veerabhadra temple is situated in Sahapurpeth in Gadag and that there are on the right and left sides of that temple, Laxmi and Saraswathi idols and that the picture of a pair of yoked bulls was placed in between and all the three appeared as one. He has given evidence that the yoked bulls were also decorated so as to appear as idols and it was written there, "Vote for the Respondent No. 1 and Miss Mahishi." That was with a view to instil on the voters that there would be the blessings of God and that was also done with a view that there would be divine displeasure, if one did not vote in that manner, and Lingayats are the main devotees of this temple.

503. P. W. 24 Keshavarao Sarvade (Photographer) has given evidence that Siddappa Channaveerappa Gurubasappanavar (P. W. 48) had come to him on 12th February 1962 and said that a photograph had to be taken at Veerabhadra temple of the board of the Respondent No. 1 which had been put up at the door, as it was looking nice. He has given evidence that he went with him and took the photo on that day and that Ex. 419 is the negative of that photo so taken by him and Ex. 420 is the positive copy of Ex. 419. He has also given evidence that by seeing that photo, a religious feeling was created in him.

504. P. W. 28 Fakkiravva has given evidence that her house is near Veerabhadra temple and that the picture of a pair of bulls was put up on the door of Veerabhadra temple and that by seeing the picture of Basavanna, as it is a family deity, she was very much glad and she was inclined to give the votes to Basavanna and that picture was there from about 15 days before the election, for a period of about a month. Her evidence is also corroborated by the evidence of P. W. 29 Sugalabai.

505. P. W. 48 Siddappa Gurubasappanavar has given evidence corroborating the evidence of P. W. 28 and P. W. 29 on material particulars on this point. He has also given evidence that on seeing the decoration there, he got instilled in him the idea of Basavanna having got the message from Parameshwar, that the vote that they would be giving to Basavanna would be purposeful. He has also given evidence that he got the feeling of devotion and he felt that if he took out a photo and maintained it, it would be a beautiful thing. So, he went to the photographer and asked him to take out the photo of the above decoration

and that he had brought the photographer and showed him what was the photo to be taken and accordingly, the photographer took the photo. He has also given evidence that Ex. 420 is that photo.

506. The Respondent No. 1 has given evidence that it is not true that Veerabhadra temple had been decorated with the posters announcing the candidature and that Ex. 419 and Ex. 420 in that respect are fabricated. He has also given evidence that what P. W. 24 and P. W. 48 have stated about the temple having been decorated and their having taken photo is false. R. W. 10 Halakatteppa Bevinamarad has given evidence that he was a panch of the Veerabhadra temple and that nothing was pasted in that temple during the last election and that the panchas of that temple do not permit election boards to be put up in that temple.

507. The petition does not mention any photo and the Petitioner also does not refer to any photo in his evidence, though the Petitioner's evidence was commenced on 3rd December 1962 and his evidence was over 21st/23rd January 1963. These photos and other photos were produced on behalf of the Petitioner on 20th August 1962. P. W. 48 Siddappa Gurubasappanavar has given evidence that about six or seven days after the election, he had handed over to the Petitioner two copies of the photos. If that statement was true, then the Petitioner should have referred the photos in his petition. In the absence of such mention in the petition of either the photos or the name of P. W. 48 in the petition, photo obviously will be an improvement and a concoction in the version of the Petitioner's story.

508. The photo similar to Ex. 420 could be arranged to be taken and could be taken at any time by anybody. There is resemblance of artificiality and unnaturalness in the evidence of the Petitioner's witnesses on this point and their evidence appears to be highly improbable. In the absence of the mention of the photos and the name of P. W. 48 in the petition, the possibility of those photos having been taken sometimes after the election petition was filed, for the purpose of election petition, cannot totally be ruled out. The Veerabhadra temple, the idols of Laxmi and Saraswati and other arrangements in the temple are always there. The only thing wanted was the poster of the Respondent No. 1 to be placed in between Laxmi and Saraswati and the photos could be taken at any time. There is evidence on record that such posters were available in the street. So, the photos could have been taken for the purpose of evidence in this case after the election.

509. P. W. 28 Fakkiravva and P. W. 29 Sugalabai are staying very near the Veerabhadra temple. Sugalabai says that the Petitioner came to her house. If the poster of the Respondent No. 1 was in the temple for one and half months during the election time, then the Petitioner must have noticed it and he might have mentioned definitely

about it in his petition. That has not been done, showing thereby that the poster of the Respondent No. 1 was not at all there in the temple. Fakkiravva and Sugalabai are highly interested and unreliable witnesses, so also P. W. 24 and P. W. 48. The evidence of these witnesses appear to be very artificial and they appear to be partisan witnesses. I am unable to accept their story, as it appears to be very artificial.

510. R.W. 10 Halakateppa Bevinamarada is one of the panchas of the Veerabhadra temple. The petition and the Petitioner's evidence do not disclose who had done the decoration in that temple and no consent or authority of the Respondent No. 1 has been either alleged or proved. Consent or authority of the Respondent No. 1 cannot also be alleged, because it is not shown who had done that decoration. I accept the evidence of the Respondent No. 1 and his witnesses on this point.

511. For the reasons stated above, I reject the evidence of the Petitioner and his witnesses on this point and hold that the particulars of this part of the allegation mentioned in para 5 (*c*) (ii) of the petition is not also proved by the petitioner.

Part (VI)

512. Flag hoisting on the Republic Day by the Respondent No. 1.

This allegation is spoken to by the Petitioner and the Respondent No. 1.

513. The Petitioner has given evidence that on 26th January 1962, which was a Republic Day, the National Flag was hoisted by the Responded No. 1 inside the Taluka Office on behalf of the Gadag Taluka Congress Committee and that the Respondent No. 1 spoke on that occasion that he had stood for the election and all should vote for him and Miss Mahishi.

514. The Respondent No. 1 has given evidence that he did the flag hoisting on the Republic Day in the open maidan before the Tahsildar's kacheri and that he made a speech on that day, but he did not make any reference to the election there.

515. The Petitioner has no personal knowledge of this allegation in view of his verification to the petition and his evidence is interested and it is not corroborated by evidence of any other independent witnesses. No witness has been examined by the Petitioner on this point. The evidence of the Respondent No. 1 appears to be probable and true.

516. Therefore, I hold that the Petitioner has failed to prove this part of the allegations mentioned in para 5 (c) (ii) of the petition, and I also hold that the petitioner has failed to prove all the allegations mentioned in para 5 (c) (ii) of the petition.

517. *The next allegation which I have to consider in relation to Issue No. 3 is the allegation mentioned in para 5 (cc) (i) of the petition.*

518. The allegation contained in para 5 (cc)(i) of the petition is that on 21st February 1962, letters purporting to be addressed to the editors of the Navanagarika and Deshavani which papers were committed to campaigneer and canvassed for the Respondent No. 1 and Miss Mahishi, were published in which it was charged that the Petitioner had stabbed the Muslims in the back. False allegations that the Petitioner has failed to acquire more space for the Muslims burial ground ; the description stabbing the Muslims in the back was deliberately calculated to rouse the feelings of enmity and hatred culminating in maintaining that such of the Muslims who acted against the Government were called and known as traitors in their religion. This was calculated to act to divide the citizens of India into two classes, namely, the rulers and the ruled, or subject classes. The congress was dubbed the ruling class and the rest as the subject class.

519. The Respondent No. 1 has stated in para 33 of his written statement Ex. 36 that the allegations in para 5 (cc) (i) of the petition are not true and as stated in an earlier paragraph (paras 30 and 31 of the written statement), this Respondent is not in any way connected with nor is responsible for anything appear in dailies. It is false to say that the papers were committed to campaigneer or canvass for the Respondent and that the contents of the said para are not admitted and he cannot be held responsible in any way.

520. The above allegation is spoken to by the Petitioner, P.W. 34, P.W. 35, P.W. 45 and P.W. 60 and also by the Respondent No. 1, R.W. 18, R.W. 22 R.W. 29 and R.W. 35. The relevant documents are Ex. 309 (Nagarika dated 19th February 1962) Ex. 197 (Navanagarika, dated 21st February 1962) ; Ex. 173 (Deshavani dated 21st February 1962) and Ex. 840, the document got produced by the Petitioner from the Office of the Deputy Commissioner and put to R.W. 35 Umachagi and admitted by R.W. 29 Noorani.

521. The Petitioner has given evidence that in Ex. 197, the issue of Navanagarika, dated 21st February 1962, a statement was published under the caption, " Sri K. H. Patil has stabbed the Muslims in the back " and in para 8, it is stated therein that although sanction had been accorded for Muslims, Sri K. H. Patil, alleging to be the Chairman of the Civic Board and others have not brought into force and that as there was no space in the burial ground, dead bodies were being placed one upon another. He has also given evidence that it is false that there was not space for Muslims for burial and that he did not get additional space. He has also given evidence that the Muslim voters became enimical towards him on this ground.

522. P.W. 34 Kanavi, the President of the Gadag Betageri Municipality, has given evidence that the municipality had made arrangements for the burial ground of the Muslims of Gadag-Betageri and that they are also about to acquire another site for the burial ground. P.W. 60 Kalil *Urf* Gulmohmad has given evidence that on 19th February 1962, they (he and others) had sent a publication to some papers and it had appeared in Ex. 309 Nagarika.

523. The Respondent No. 1 has given evidence that P.W. 35 Hombali has supported the Petitioner during the election and that he (respondent No. 1) had no talk with any Muslims about the allegations regarding the publication in the newspapers in which the Petitioner was said to have stabbed the Muslims in the back, as he (Respondent No. 1) had nothing to do with that publication and that he had no talk about it with Dr. Konnur, the editor of Navanagarika.

524. R.W. 18, Dr. Konnur, has given evidence that no article or publication had been got made in his paper through the instrumentality

of the Respondent No. 1. R. . 29 Noorani has given evidence that he knows that Muslims were demanding more land for the burial and that he might have applied with the others for acquisition for such ground to the Deputy Commissioner and that R.W. 35 Umachagi might have joined with him, and he has also given evidence that the burial ground of the Muslims at Gadag is nearly full and that they (meaning Muslims) had applied for the Municipality for burial ground and he cannot remember what happened to the application made to the Municipality. R.W. 35 Umachagi has given evidence that he had signed the application, dated 8th February 1962 addressed to the Deputy Commissioner and which is marked Ex. 840. He has also given evidence that, that application has been signed by 101 Muslims of Gadag-Betageri.

525. Ex. 309 is an article published by a section of the Muslims of the Gadag constituency and the same was published in the Nagarika daily dated 19th February 1962. Another section of the Muslims had given an answer or reply to Ex. 309 at Ex. 197 on the very same day and the same had been printed by the editors of Deshavani and Navanagarika in their issues of 21st February 1962. Nagarika daily had not published the contents of Ex. 197, though that article was addressed to the Nagarika paper.

526. Ex. 197, was contributed by another section of Muslims of the Gadag-Betageri, The election petition does not say that the article appearing in Ex. 197 was sent by any body in any way connected with the Respondent No. 1 .The late attempt that it was R.W. 29 Noorani who had sent that article cannot be accepted, as the name of Noorani has not been mentioned in the petition with respect to this allegation. The only witness examined on this point is P.W. 60 Kalil and he has no personal knowledge ,though P.W. 60 says in his examination-in-chief that R.W. 29 Noorani had signed that article. In his cross-examination, P.W. 60 has deposed that some acquaintences of his had told him that Noorani had signed the article appearing in Ex. 197. P.W. 60 does not remember the names of such acquaintences and no such acquaintence is examined by the Petitioner. There is no evidence that the article was published by the Respondent No. 1 or it was published with the consent of the Respondent No. 1 or by some person on behalf of the Respondent No. 1. Further, the evidence of P.W. 60 is highly interested.

527. The allegation that the Respondent No. 1 was getting the support of the newspapers by paying Rs. 500 each is not at all convincingly established. The only evidence on this point is that of P.W. 35 Hombali who is admittedly a friend of P.W. 60, Kalil and a strong supporter of the Petitioner during his election, and P.W. 35 is also under the obligation of the Petitioner as he derives a pecuniar benefit for his paper from the Petitioner. P.W. 45 Gudi is a friend of P.W. 35 Hombali. The evidence comes on the scene very late. Both P.W. 35 and P.W. 60 have deposed that they had never informed this matter either to the Petitioner or to anybody. Their evidence, therefore, cannot be believed.

528. The Petitioner has made much of the document, Ex. 840, an application to the Deputy Commissioner sent by the Muslims for a burial ground. Ex. 840 shows that want of space for burial ground was keenly felt by the Muslims and acquisition orders were already passed and charges were paid. The order for possession was not executed by the Municipality. There is no personal allegation against the Petitioner, but the allegation is against the persons concerned in the Municipality. When there is no allegation against a particular person, but the allegation is against a group of persons, then, there will be no personal allegation.

529. "Stabbing in the back" has nothing to do with stabbing actually as such. "Stabbing in the back" appears only in the Navanagarika paper Ex. 197. Stabbing in the back in Ex. 197 is followed by paras 5, 6, 7 and 8 in that paper. All these paras 5 to 8 refer to the Petitioner as a public figure and not as an individual. The facts stated in the application Ex. 840 is not at all disputed or challenged by the Petitioner.

530. When the editor has no reasons to believe that contents of an article is not true, the editor himself is not liable. It must be shown by the persons alleging that at the time the article was published, the editor knew that the contents of the article was false or not true. If an article is published, before making the Respondent No. 1 responsible for that article, it must be shown that the article was published with the consent of the Respondent No. 1. The consent may be expressed or implied and the implied knowledge must be more than knowledge or connivance. Where the Managing Director of a newspaper was the President of the Provincial Congress Committee and the editor and publisher of it was a prominent congressman, and the paper was actively canvassing for the congress through its editorial, reports, circulars and advertisements and receiving donations from the congress, it was held that these facts were not sufficient to make that newspaper or its editor an agent of the candidate put up by the congress so as to make the candidate liable for the statements made in that paper. (10 E. L. R. page 376). (The other authorities are A.I.R. 1958 Assam 97, A.I.R. 1959 Assam 139 equals 17 E.L.R. 243 (ar at page 249), 8 E.L.R. 265 (at page 279), 10 E.L.R. 376, A.I.R. 1960 Punjab 45, 15 E.L.R. 358, A.I.R. 1961 Mysore 106.

531. The Petitioner has not adduced convincing evidence of a reliable character in proof of the above allegation, and I ,therefore, hold that the Petitioner has failed to prove the allegations contained in para 5 (*cc*) (i) of the petition and in the result, I hold that the Petitioner has failed to prove any of the allegations contained in issue No. 3.

Issue No. 4

532. *Does the Petitioner prove the corrupt practices of false statement, etc., under Section* 123 (4) *of the R. P. Act as alleged in paragraphs* 4 (*d*) *and* 5 (*d*) (*i*), (*ii*), (*iii*), (*iv*), (*v*), (*vi*), (*vii*), (*viii*), (*ix*) *and* (*x*) *of the petition* ?

533. On a perusal of the particulars of the allegations contained in 5 (*d*) series, there are only nine allegations and the tenth allegation of the petition as framed in the Issue No. 4 is not there in the petition.

534. I will now proceed to consider each one of the allegations separately.

535. *The allegations contained in para* 5 (*d*) (*i*) *of the petition.*

The allegations in para 5 (*d*) (i) of the petition is that Sri H. B. Konnur and Sri Channabaswami Hiremath, the editors of the two Kannada dailies of Gadag, namely, the Navanagarika and the Deshavani identified themselves completely with the Respondent No. 1 and acted as his agents throughout. They delivered speeches asking for votes for the Respondent No. 1. In fact, they acted as the second self of the Respondent No. 1. Being the executive members of the Taluka Congress Committee of which the Respondent No. 1 is the President, as well as members of the Election Publicity Committee for the constituency, they and Sri F. M. Baradwad were placed in-charge of publicity on behalf of tue Respondent No. 1 and took part practically in all the meetings and the processions. They and the Respondent No. 1 have made it a business to indulge in false statements against the Petitioner. On 27th January 1962, the Deshavani styled the Petitioner as "Bakasur" and "Basmasur" In the same issue, Sri Yellusa Katavate, another canvassing agent of the Respondent No. 1 called the Petitioner, "A sinner" In the Deshavani, in its issue of 1st February 1962, it is falsely stated that the Petitioner used the cars of the sale Society and the Agricultural Produce Market Committee for his election. The Petitioner was also styled, "And ungrateful fellow in the extreme."

536. The Respondent No. 1 has stated in para 34 of his written statement Ex. 36 that the allegations in para 5 (*d*) (i) of the petition are not true and that this Respondent is not connected with the papers and that the editors also never acted as agents of this Respondent nor did they act as the second self of this Respondent. The contents of the para are not admitted and this Respondent cannot be held responsible for what unconnected persons might have written or spoken without his consent. It is true that Sri Channabaswami is the Vice-President of the Taluka Congress Committee, but Mr. Konnur is not an executive member of the committee, though he is a staunch congressman. It is false to say that Sri Baradwad and other two persons were placed by this Respondent in charge of publicity on his behalf. The contents of the paras are not admitted and this Respondent cannot be held responsible for them.

537. The above allegation is spoken to by the Petitioner, P.W. 8, P.W. 23, P.W. 34 and P.W. 35 and P.W. 64 and also by the Respondent No. 1 and R.W. 22. The relevant documents are Ex. 155, the issue of Deshavani dated 27th January 1962 and Ex. 157, the issue of Navanagarika, dated 1st February 1962.

538. The Petitioner has given evidence that in the issue of Deshavani (Ex. 155), dated 27th January 1962, the speech of Sri Baradwad, dated 22nd January 1962 is reported and it is stated that the Petitioner had threatened the members in his administration of the Agricultural Produce Marketing Committee and was parading as Basmasur and the implication of Basmasur was that all should be destroyed and that the Petitioner was a demon and that the Petitioner has been referred to as Vidrohi in the speech of Yellusa Katavate in that issue. The petitioner has also given evidence that Dr. H. B. Konnur is the editor of Navanagarika and Sri Channabaswami Hiremath is the editor of Deshavani and both these persons were canvassing for votes for the Respondent No. 1, and they also made speeches for the Respondent No. 1. He has given evidence that Channabaswami, the Vice-President of the Taluka Congress Committee, the President of the Mandal Congress Committee and a Member of the Chunavana Prachar Samiti of the Respondent No. 1, and that these two persons were publishing for votes in these two papers mentioned above and the main object of these papers was to support the Respondent No .1 by making false publications against him.

539. P. W. 8 Adiveppa Hanamappanavar has given evidence that the issue of Navanagarika and Deshavani were being received in the house of Govindagouda Hiregoudar who was getting those papers and distributing them, and that was distributed freely and he was reading them.

540. P. W. 23 Virupaxappa Harlapur has given evidence that there was a congress propaganda meeting on 26th January 1962 at Tenginakai bazaar which he had attended and that Dr. Konnur, Sri Channa baswami Hiremath, Sri Kambli, Dr. Bambure, the Respondent No. 1 and Sri Baradwad were also present. He has also given evidence that Sri Baradwad was the President of that meeting and that Sri Baradwad said in the meeting that the Petitioner was sturtling about arrogantly like Basmasur and like Basmasur, he was swallowing one cart load of food and wanted one prey. He has also given evidence that Baradwad had said that they would trample down such a person and that had an adverse affect on the audience that they should not vote for the Petitioner and the report of the two meetings had appeared in Ex. 155. He has also deposed that Basmasur needs a person who looks to his own selfish pleasure and burns others and Bakasur needs one who swallows whatever is available and harasses others. P. W. 8 has given further evidence that he did not change his opinion on hearing the speeches.

541. P. W. 34 Kanavi, the President of the Gadag-Betgeri Municipality, has given evidence that the words " Bakasur " and " Basmasur " had a bad effect on the voters and the description as " Vidrohi " (unfaithful) as reported in Ex. 155 had also had a bad effect on the voters.

542. P. W. 35 Hombali, the proprietor of Nagarika daily, has given evidence that in the meeting of 26th January 1962, the expressions, " Basmasur " and " Bakasur " were used by Sri Baradwad.

543. P. W. 64 Jayaramachar Malagi, the correspondent of Samyukta Karnatak paper, has given evidence that he had attended the meeting of 26th January 1962 at Betgeri and that Sri Baradwad who spoke in that meeting referred to the Petitioner as " Bakasur and " Basmasur."

544. The Respondent No. 1 has given evidence that the editors of Navanagarika and Deshavani supported the congress in the election and he happened to be the congress candidate and it is not true that he (Respondent No. 1), offered them money to support him and to write articles supporting him. He has also given evidence that he had no occasion to protest against the reference to the Petitioner as ' Bakasur ' and ' Basmasur ' and that he was present in the meeting reported in Ex. 155 wherein, the Petitioner was referred to as " Bakasur " and " Basmasur ". He has also given evidence that he spoke in that meeting, and that as both the sides in an election were using such terms, he did not give importance to it, and that he never protested about any of the speeches or writings, as he did not think it necessary. He has given further evidence that Deshavani and Navanagarika supported his candidature as he happened to be a congress candidate and he accepted it as support to the congress.

545. The publication complained of is in Kannada which was published in the issue of the Deshavani paper, dated 27th January 1962. It is desirable to quote the speech with a view to find out the true meaning of the allegations contained in them and the real purpose for which they were published. I have got them translated into English and I think the translation has brought out correctly the tenor as well as the meaning of this publication. The relevant speech complained in Ex. 155 is here under :

Deshvani :

Gadag :—Sunday, dated 27—1—1962.

The First Meeting of the Congress Election Pro paganda. A brilliant auspicious prologue to the defeat of the Opponents of the Congress.

The End of the hopes of Sri K. H. Patil who is conducting himself with a sense of pride like Bhasmasura-Bakasura.'

Thought provoking speeches by Congress leaders and others :
(From our correspondent) :

Gadag 27th :—

Sri F. M. Baradwad who presided over the first meeting of the Congress election propaganda which was held yesterday evening in the Tenginkai Bazar, spoke with great enthusiasm as follows :—

" Sri K. H. Patil who has broken the pledge and who has stood against the Congress against the congress candidate, Sri K. P. Gadag, in the Gadag Constituency, is showing off as Basmasura, threatening the A.P.M.C. (Agricultural Produce Marketing Committee) traders in his administration and is acting like Bakasura, as if he would have a cart-load of food and one human sacrifice a day. In this first meeting of the congress election propaganda, there has been appeasement of the nine planets, the goddess has descended and there has been laying of the foundation of the foundation. The election of Sri K. P Gadag by a huge majority is certain."

Sri Yellosa Katavate's speech

" Sri Yellosa Khatavate commenced his speech by severely criticising the attitude of some deserters from the Congress and working against the Congress styling themselves as independent Congressmen. He gave illustrations and asserted that such sinners have been from time to time thorns in the way of the people of noble spirit."

546. It has been contended on behalf of the Petitioner that expressions " Bhasmasur " and " Bakasur " were reported to have been used by Sri Baradwad in his presidential speech of that meeting convened for the purpose of the election propaganda on behalf of the Respondent No. 1 and that speech was published by Sri Chanabaswami Hiremath in his paper, Deshavani of 27th January 1962 and that Chanabaswami Hiremath and the Respondent No. 1 were also speakers in that meeting along with the other speakers. He contended that the three expressions, " Bhasmasur ", " Bakasur " and " Sinner " complained of are definitely not complimentary expressions but they had been used to assassinate the character of the Petitioner, because the term " Bhasmasur " transforms all the Asura qualities of the demon Bhasmasur to the Petitioner and that expression connotes that the Petitioner's character as such as to destroy people all solely for the greed of his endless power and this was done entirely for the success of the Respondent No. 1 in the election at the cost of character assessination of the Petitioner, and that in the mythological language, the Petitioner is a Bhasmasur and in the plain language, he is a devil or somebody with bad character. He has further urged that Bakasur was demon or Asura who required a cart-load of food and one human being daily to satisfy his hunger and thus, the Petitioner, in the speech of Sri Baradwad was compared to a canibal and great cruelty and wickedness had been imputed to the Petitioner by using the expression " Bakasur " The learned advocate for the Petitioner has also contended that Yellosa Katavate in his speech described the Petitioner as 'Vidrohi' meaning 'Sinner' and a reference is made to the person who had left the congress

and stood up and contested against the congress as a candidate in that election and that this reference is directed to the Petitioner, because the Petitioner is a person who had left the congress and contested against it in the election. From the reported speech in the Deshavani, Sri B. S. Patil contended further that the statement of Sri Baradwad that the merchants were threatended is false. He cited the decision reported in 15 E.L.R. 205, 21 E.L.R. 247 and 22 E.L.R. 261 on this point.

547. On principle, I fully agree with the rulings reported in 21 E.L.R. 247 (Anjaney Reddy's case). It has been held in 1964 Mysore Law Journal 488 (Devaiah's case) that one of the essential ingradients of the corrupt practice coming under Section 123 (4) of the R. P Act is that the person who published a statement of fact must have believed that the statement to be false or at any rate should not believe it to be true and the burden of proving each one of these ingradients is on the person who challenges the Validity of the election. Further, it has been held that the corrupt practices have to be proved more or less in the same manner as an offence has to be proved in a criminal case, and it has been laid down in Anjaney Reddy *Vs.* Gangi Reddy (1960 Mysore Law Journal 747) that the Petitioner is required to prove negative facts, the same has to be generally proved by placing the relevant circumstances before the court and leaving the court to draw necessary inferences from the proved facts as it may not ordinarily be possible to prove those facts by evidence or aliunde.

548. There is overwhelming evidence on record to show that Sri Baradwad, Sri Channaswami Hiremath, Dr. Konnur and others were canvassing for the congress throughout the election and the fact that they were convassing during the election for the congress candidates is admitted by the Respondent No. 1. As the Respondent No. 1 is the official nominee of the congress set up by the congress party to contest the election, the congress party had arranged its own Chunavana Prachar Samiti for the election purposes, for propaganda, for arranging election meetings and for arranging processions in connection with the election of the congress candidates.

549. It is not proved by the Petitioner that Dr. Konnur, Sri Channabaswami Hiremath and Sri Baradwad were placed in charge of publicity by the Respondent No. 1 and that they acted as the second self of the Respondent No. 1. The allegation that the Respondent No. 1 made it a business to indulge in false statements is also not proved by the Petitioner. In the whole petition, there is no allegation of any false statement made by the Respondent No. 1. The alleged statements are not objectionable or shown to be believed to be not true. The expressions are to be interpreted as used. The meaning of the expression as used in the paper Ex. 155 is that the Petitioner is the Chairman of the A. P. M. C. and "Darpa" is nothing but show of power. "Basmasur" and "Bakasur" are mythological terms and the words "bali bekenna ritiyalli" means as if he wanted bali or prey. About the A. P. M. C., how the Petitioner

behaved himself, the Petitioner himself says in the petition that the merchants are the natural enemies of the A. P. M. C. In his deposition, the Petitioner himself admits that he had cancelled a licence and that there was a suit by one Manavi and he says that the suit was lost. The merchants had observed a haratal, the day following Sri Jatti's meeting in protest against the disturbance in Sri Jatti's meeting. Sri Jatti's speech shows that there were complaints or representations by merchants made to him. It was because of the statement of Sri Jatti about the A. P. M. C. in the meeting, that there was a disturbance in his meeting. The words 'Basmasur' and 'Bakasur' could have been avoided as deposed to by the Respondent No. 1. But in the election, they have been used. Nevertheless, the way in which the Petitioner showed his power is an indication of his authority.

550. So far as Bakasur is concerned, the Petitioner himself has not spoken about it in his evidence and the petitioner has ignored it altogether in his evidence. The context of the reports shows that it was with reference to the show of power as A. P. M. C. Chairman, and the way in which the Petitioner was acting, the above term has been used as if Bakasur and Basmasur were acting(reetiyalli). There is enough material on record to show that the Petitioner was a congress man and he was in the Congress Organisation for quite a long time and he resigned from the Congress at the time of giving tickets to the congress candidates at the time of the General Elections of 1962. In para 145 of his evidence, the Petitioner has deposed that 'Vidrohi' means one who breaks promises. Since, he had left the Congress Organisation, there is some justification for the expression' Vidrohi' having been used in the speech.

551. The publication in Ex. 155 is a true publication. It is admitted by the witnesses on behalf of the Petitioner that it is a true publication. If the reference is taken to be a reference to the allegation in the meeting, the question is what was the impression created on the audience, not on the readers. The evidence of the witness who speak to their impressions on reading the report will not help them in deciding the effect on the audience of that meeting. So far as the effect of the meeting is concerned, there is very good evidence to show that the use of these words had no important part in that meeting, because neither Nagarika Ex. 214 (the paper that supported the Petitioner during the election) nor Navanagarika Ex. 175 make any mention of these expressions like 'Bakasur' and 'Bhasmasur'. One of the witnesses of the Petitioner, admits that he was present in the meeting and after the meeting, he did not change his opinion on the Petitioner, and there is no allegation that these words used had brought about a change in the minds of the voters. Further, the above expressions were alleged to have been used on 26th January 1962, long prior to the polling and so I am of the view that those expressions would not have produced any effect on the voters.

552. Where the Managing Director of a newspaper was the President of the Provincial Congress Committee and the editor and publisher of it was, a prominent congress man, and the paper was actively canvassing for the congress through its editorial, reports, circulars and advertisements and receiving donations from the congress, it was held, that these facts were not sufficient to make that news paper or its editor an agent of the candidate put up by the congress so as to make the candidate liable for the statements in that paper. (10 E. L. R. 376).

553. *Then I will consider the publication in Ex.* 157, *the issue of Deshavani dated* 1*st February* 1962.

554. The allegation in the petition is that the petitioner had used the cars of the Sale Society and the A. P. M. C. (Agricultural Produce Market Committee) for his election and that the Petitioner was also styled as 'an ungrateful fellow in the extreme'

555. The Petitioner has given evidence that it is false to say that he used the car of the Sale Society for the election purposes and that he used the car of the A. P. M. C. and that the Marketing Committee does not possess any car and that he has been falsely called as ungrateful. The Petitioner has given evidence that 'Vidrohi' means one who breaks promises or does evil to others. The Petitioner has also examined P. W. 67 on this point.

556. P.W. 67 Bimaraddi Venkaraddi of Hulakoti is the Director of the Co-operative Education Society in Hulakoti of which the Petitioner was an Honorary Secretary. He has given evidence that R.W. 5 Govindagoudar Hiregoudar told him that he (Hiregoudar) had given publication in paper in P.W. 67's name and in the name of Kalagudi Manohar of his village and said that he had given the publication in Deshavani Ex. 157 and he showed that publication. He has given further evidence that he had not written that publication and he had not signed any such publication and that the statement appearing in Ex. 157 are false. No suggestion has been put to R.W. 5 Govindagoudar Hiregoudar in his cross examination that it was he (R.W. 5) who had sent the contents of Ex. 157 to the Deshavani as alleged by P.W. 67.

557. It is alleged in the petition that Ex. 157 is a false publication. There is no allegation in the petitioner in the Petitioner's evidence nor any where till P.W. 67 appears in Court that the articles was not contributed by the two persons mentioned in Ex. 157 and the evidence of P.W. 67 is unreliable, as he appears to be a henchman, supporter and co-worker of the Petitioner. The publication of the article complained of in Ex. 157 has been signed by two persons and even if P.W. 67 is believed, it is an article believed to have been signed by two persons, and the editor published it as an article in that paper and it is not alleged and there is no evidence

that the editor of that paper knew that the publication was false and that he believed that its contents were not true. The Respondent No. 1 cannot be held liable, because it is not even alleged and there is no evidence at all that the Respondent No. 1 had consented to the publication of that article. The A.P.M.C. has its records and by the production of those records, the Petitioner could have completely cleared himself. The Petitioner had not done so and the burden is upon him.

558. For the reasons stated above, I hold that the Petitioner has failed to prove the allegations mentioned in para 5 (*d*) (i) of the petition.

559. *The next allegation mentioned is in para* 5 (*d*) (*ii*) *of the petition.*

560. The allegations contained in para 5 (*d*) (*ii*) of the petition are that in the Deshavani, in its issue of 3rd February 1962, a totally false allegation was that the Petitioner was removed from the Secretaryship of the Hulakoti Co-operative Education Society, Ltd., Hulakoti, etc., as the Committee got disgusted with the deliberate dilatory tactics of the Petitioner. Similarly, an entirely false and unfounded statement has been made that the Petitioner has entrusted the building contract to a kith and kin of his and has appointed his own brother in that behalf. It is also falsely stated that the Petitioner has mis-used the funds sanctioned for general hostel for ladies at Gadag and got the Government grant sanctioned by hook or crook. A false allegation was made that the Petitioner was getting his living or eking out his existence from out of the funds of the Gadag Co-operative Cotton Sale Society, Ltd., Gadag, and therefore, he has left his village behind and settled down in Gadag. These false statements have been made by Sri B. S. Akki, a canvassing agent of the Respondent No. 1.

561. The Respondent No. 1 has stated in para 35 of his written statement Ex. 36 that the allegations mentioned in para 5 (*d*) (*ii*) of the petition are not true and that this Respondent does not admit the allegations and he is not a party directly or indirectly to the allegations and cannot be held responsible for the acts or statements of the persons without his consent and that Sri B. S. Akki referred to therein was not a canvassing agent of his and who has been residing in a village in Muddebihal Taluka since long.

562. The above allegations are spoken to by the Petitioner, P.W. 67 and also by the Respondent No. 1, R.W. 22, and R.W. 26 and the relevant documents are Ex. 159 the issue of Deshavani, dated 3rd February 1962; and Exs. 763, 764 and 765 the letters written by teachers.

563. The Petitioner has given evidence that it is falsely stated in the issue of Deshavani, Ex. 159, dated 3rd February 1962 that he had been removed from Honorary Secretaryship of Hulakoti Co-operative Society and that he is still the Chairman of that Society and the reasons

also for which he was alleged to have been removed are also false. It is also false that he had entrusted the building contract to his kith and kin and that he had appointed his brother as engineer and that his brother's services were lent to the Dharwar District Co-operative Oil Seeds Processing Society, Ltd., Gadag. by the Government.

564. P.W. 67 Bimareddy Venkareddy Sisuvinahalli of Hulakoti has given evidence that he is the Director of the Co-operative Educational Society in Hulakoti and the Petitioner was the Honorary Secretary and that there had been no complaint against the Petitioner either when he was the Secretary of the Society thereafter or when the Petitioner is its Chairman since the last four or five years and Dr. Akki has nothing to do with or in no way connected with the above society. He has also given evidence that he does not know the history of that society before he became the director.

565. The Respondent No. 1 has given evidence that Sri B. S. Akki was not his canvassing agent and that Sri Akki stays at Almatti now and he always stays there and he was there during the election period also. He has given evidence that he does not know personally whether the Petitioner had been removed from the Hulakoti Co-operative Educational Society and that Sri Chanabaswami said that it was the letter of Sri Akki which he had published and they were responsible for it. He has also given evidence that he does not know personally about the building contract, but since the Petitioner's brother is an engineer in the Oil Seeds Processing Association, which has been sponsored by the Petitioner, people entertain suspicion. He has also given evidence that the Petitioner's brother is a Government servant whose services have been lent to the Society.

566. R.W. 22 Chanabaswami Hiremath has given evidence that the report of the meeting of 2nd February 1962 appearing in Deshavani Ex. 159 is correct and that Sri Akki had given the article appearing on the righthand side of Ex. 159, to Sri Hosmath who showed it to him (R.W. 22) and it was signed by Sri Akki. He has also given evidence that Sri Akki was a responsible person and he (R.W. 22) therefore said that, that article might be published.

567. R. W. 26 Hanamappa Bimappa Bukkannavar, a teacher, has given evidence that he worked at Sotakanhal and Hirekoppa Schools which came under the Hulakoti Co-operative Education Society and that the petitioner was the Secretary of that Society when he was a teacher in those schools, and that the Petitioner was not treating them properly and he (the Petitioner), was not giving them their pay properly and that the Petitioner was speaking arrogantly and that the teachers had made many applications about it and had also called a conference. He has also given evidence that applications had been made to the Educational Inspector, Administrative Officer School Board and such applications were made many times. He has also given evidence that

R. W. 25 Lingadhal was the Secretary of their conference. R. W. 26 has deposed that he had met the Educational Officer at Gadag and told him of the grievances and that the officer had ordered that the pay of the teachers should be given and he (R. W. 26) got the pay of Sotakanhal School. He has given further evidence that he was not given pay of Hirekoppa school and he was told that a resolution had been passed that he (R. W. 26) had not been appointed there and that R. W. 26 had worked for nine months and subsequently, the Petitioner came and wrote in the visit book that R. W. 26 had not been appointed and hence, the Head-Master there told R. W. 26 that as it was so written in the book, R. W. 26 should not come to that school.

568. *The translation of Ex.* 159 *Deshavani, Saturday, dated* 3*rd February* 1962.

An open letter to Sri K. H. Patil (Doctor B. S. Akki).

Sir,

"I heard about your election propaganda speeches beginning with your letter to M. P. C. C. President. But your rule in the Gadag Cotton Sale Society and Market Committee is such as to put shame to the Moghal Darbar.

Only a few people working in the area know that on account of you who in your love of power has put on the guise of service, the Registrar of Co-operative Society, the Secretary of the Co-operative Department and the Honourable Minister of Co-operation are in trouble. How should the ignorant know? It is natural for them to believe the sweet words of Sri. K. H. Patil flowing from the election platform.

Do you remember that you were the Secretary of the Hulakoti Co-operative Educational Society some years ago, when I, the resident of a neighbouring village, was a member of the Society? Though, the grant was received for payment to the teachers of Mundargi and Nargund Pethas, the payment was not made in time and after the teachers repeatedly came and went, the pay had to be despatched from Malasandra post. The Committee got angry and you had to be compelled to go out.

What was the necessity of having branches of the Gadag Cotton Sale Society at Malasamudra, Hulakoti and Mulgund which are within three and five miles from Gadag? Could it not be done at Kadadi, Hodogoli, Kurtakoti or Hombal? Not only this you gave a contract of the building contracts to one of your people and appointed your own brother as Engineer. The secret in your mind in conducting yourself, as if, you have taken a contract of the co-operative field becomes clear from all these. This applies to the buildings that have come into—existence in Gadag under your Management.

The hostel money that could be secured by the ably conducted Vidyadan Samiti Girls High School, was got by you somehow and the money was unnecessarily applied for a wrong purpose. Is this not injustice to the educational institution?

Further, where was the necessity of demolishing and re-building the compound walls of the Sale Society which were in excellent condition before the Sahitya Parishat? Public service is not a source of livelihood. However renouncing a person may be, it becomes necessary for him to follow some occupation to keep his house running. This being so, if the Gadag citizens view with suspicion your leaving your home and spending all your time in Gadag Cotton Sale Society, it is not matter for wonder.

It is regrettable that eight thousand rupees justly due to Sri Karjagi Settar who rendered yeoman service to the society has not been paid to him during his life time and even after his death."

569. Ex. 159 is an open letter addressed by Sri. Dr. B. S. Akki to the Petitioner and published in Deshavani. Ex. 159 does not says that the Petitioner had misappropriated the public funds, but it says that the amount that should have been used for a specific institution had not been used, but the amount of that institution was used for some other public purpose and hence it was not justified. That if the public entertains a suspicion that the Petitioner is eking out a livelihood in Gadag Cotton Society, leaving his own place, such a suspicion is not surprising. The paper does not say about any crooked means. The petition mentions it but not the Petitioner (refer para 8 of the evidence of the Petitioner).

570. The Petitioner has not stated in his evidence that the Respondent No. 1 had given consent to Dr. Akki to make and publish the above statement in a newspaper. He simply says that Sri Akki was the canvassing agent of the Respondent No. 1 and the Respondent No. 1 has given evidence that Dr. Akki was not at all his canvassing agent.

571. Dr. Akki knew abont the Educational Society referred to above, because Ex. 764 (copy of the resolution passed in the Teacher's conference) shows that Dr. Akki was one of the members of the committee that was to approach the Eeducational authorities for the grievance of the teachers. Dr. Akki is a responsible man and he had signed that statement or article published in Ex. 159. The Editor, therfore, took it to be true and at any rate the editor of Deshavani has no reasons to believe that the article in Ex. 159 was false and hence, he had published it.

572. It has been observed in 1964 Mysore Law Journal at page 488 (Devaiah *Vs.* Nagappa) that the burdeu of proving that the statement .....is false and that the publisher of that statement believed it to

be false or did not believe it to be true is on the Petitioner. It is also held in that decision that one of the essential ingredients of the corrupt practice coming under Section 123 (4) of the R. P. Act is that the person who published a statement of fact must have believed that statement to be false or at any rate should not have believed it to be true. The burden of proving each of these ingredients is on the person who challenges the validity of the election. Corrupt practices have to be proved more or less in the same manner as an offence to be proved in a criminal case.

573. When the editor has no reasons to believe that contents of an article is not true, the editor himself is not liable for the publication. It must be shown by the person alleging, that at the time the article was published, the editor knew that the contents of the article was false or not true. If an article is published, before making the Respondent No. 1 responsible for that article, it must be shown that the article was published with the consent of the Respondent No. 1. In the instant case, there is absolutely no evidence to prove the above ingredients, and that the Respondent No. 1 has sworn that Dr. Akki was not his canvassing agent and that Dr. Akki was residing at Almatti for the last few years before the election and that statement of the Respondent No. 1 remains undisputed or challenged by the Petitioner. Therefore, the editor of Deshavani and the Respondent No. 1 are not responsible for the publication of the article in Ex. 159.

574. The consent of the Respondent No. 1 to that publication is neither alleged nor proved. It has not been sworn to by the Petitioner that the publication complained of has caused any impression on the voters about the Petitioner and that it affected the prospects of the election and the article itself was published in the issue of Deshavani dated 3rd February 1962 long prior to the polling.

575. For the reasons stated above, I hold that the Petitioner has failed to prove the allegations mentioned in para 5(*d*) (ii) of the petition.

576. *The next allegation is mentioned in para* 5(*d*) (iii) *of the petition.*

577. The allegation mentioned in para 5(*d*) (iii) of the petition is that the same paper (Deshavani) in its issue dated 9th Februnry 1962. has made entirely a false statement that stones were pelted at the Chief Minister. Sri. C. F. Angadi, a relation of the Respondent No. 1 and a canvassing agent of his, made, a false statement as President of the Propaganda Meeting and also attended and addressed by the Respondent No. 1 that the Petitioner has mal-administered the Gadag- Co-operative Cotton Sale Society and the Agricultural Produce Market Committee, Gadag and that Municipal funds have been mis-appropriated.

578. The Respondent No. 1 has stated in para 36 of his written statement, Ex. 36, that the allegations in para 5 (*d*) (*iii*) of the petition are not admitted and that Sri C. F. Angadi is not his relative and that he was not the canvassing agent of his and that it is not admitted that he made any statement as alleged and it is submitted that any statement made by him on his own cannot bind or make responsible this Respondent.

579. This is spoken to by the Petitioner and the Respondent No. 1 and the relevant publication is Ex. 164, dated 9th February 1962 Deshavani.

580. The Petitioner has given evidence that Sri C. F. Angadi was the President at the meeting held at Gadag on 9th February 1962 and that meeting was presided over by the Respondent No. 1 and C. F. Angadi is a relative of the Respondent No. 1, and also a canvassing agent. He has also given evidence that Sri Angadi addressed that meeting and made a false statement that the Petitioner had been responsible for mal-administration in Gadag Cotton Sale Society and Agricultural Produce Market Committee and that there had been mis-appropriation of Municipal funds at Gadag. He has also given evidence that the majority party in the Gadag Municipality is known as Civic Board Party, of which he (the Petitioner) is the Chairman. He has also given evidence that he had not attended that meeting held on 9th February 1962.

581. The Respondent No. 1 has given evidence that C. F. Angadi is not his relative and that he is not his canvassing agent. He has also given evidence that Sri C. F. Angadi had supported him during his election as he is his friend.

582. The allegation in para 5 (*d*) (*iii*) of the petition can be split into two parts, namely, (1) the pelting of stones at the Chief Minister and (2) the statement made by Sri C. F. Angadi in the meeting. Reading the allegation of the petition, it appears that the statement of C. F. Angadi also refers to the issue of the newspaper Deshavani Ex. 164, dated 9th February 1962. At any rate, no date is given about the statement said to have been made by Sri Angadi. The consent of the Respondent to the above statement is not mentioned in the petition.

583. *Regarding the pelting of stones at the Chief Minister.*

The pelting of the stones at the Chief Minister refers to the happenings at Sri Jatti's meeting on 7th February 1962. In Ex. 162, the issue of Deshavani daily, dated 7th February 1962 (relevant publication is at, dated 6th February 1962), it is announced that there would be a meeting in which Sri Jatti, the Chief Minister of Mysore, would make an election propaganda speech and a similar announcement had been reported in Ex. 217, Nagarika daily of the same, date which was a strong supporter of the Petitioner during his election. Thus, Ex. 162 and Ex. 217 are the news paper reports of Sri Jatti's meeting.

584. Ex. 164 (Deshavani da 9- 1962), Ex. 186 (Navan arika of the same date) and Ex. 218 (Nagarika of the same date) are the news papers referring to the report of Sri Jatti's meeting of 7-2-1962 Ex. 164 report mentions the stone and a chappal having been thrown in Sri Jatti's meeting, about the Petitioner's request to Sri Jatti to speak, the latters refusal to comply with the Petitioner's request and the subsequent disturbance that followed in that meeting. A similar report with added details are given in Ex. 186 and in Ex. 218 of the said meeting. In addition to the reports of the news papers, there is over whelming evidence on record to show that there was disturbance in Sri Jatti's meeting and stones and chappals (at any rate one chappal) fell in that meeting.

585. There is enough materials on record to show that the publication of pelting stones in Sri Jatti's meeting is true. It is published in Ex. 164, that stones were pelted at the Chief Minister from the direction of Vijayadas Vakade's house and so also a chappal. This allegation in true and the editor at least beleived it to be not false, and thereafter, the publication about the pelting of stones in the Deshavani paper of 9-2-1962 is a true publication and therefore, the Petitioner cannot complain about this publication.

(2) *Statement of Sri C. F. Angadi.*

586. Ex. 164 does not mention the statement of Sri C. F. Angadi. The date of Sri Angadi's alleged statement is not given in the petition. It is also not stated in the petition that C. F. Angadi spoke at Sri Jatti's meeting. These two allegations, namely, pelting of stones and statement of C. F. Angadi, have no connection at all with each other. In the petition, the issue of 9-2-1962, (Deshavani) is mentioned Ex. 164 is the issue of Deshavani dated 9-2-1962. In Ex. 164, there is no reference to C. F. Angadi. There was another meeting on 9-2-1962 which is reported in Ex. 165, the Deshavani of the issue 10-2-1962. In Ex. 165, it is reported that C. F. Angadi presided over that meeting and spoke in that meeting. The presence of the Respondent No. 1 is also referred to in Ex 165 Therefore, the reference in the petition that the Respondent No. 1 presided over the meeting of 9-2-1962, is either false or a mis-statement.

587. In cross-examination of the Petitioner and P. W. 34 about the administration of the Gadag-Batgeri Municipality, the report of the Anti-corruption Department, the documents containing the show cause notices, the papers fixing the inspection day of the municipality, the papers containing the reports addressed to the Divisional Commissioner and other circumstances will throw considerable light that the allegations made in the relevant issue were true regarding mal-administration.

588. C. F. Angadi is not shown to be a relative of the Respondent No. 1 nor was he authorised by the Respondent No. 1 to make that speech. There was no proof of the consent of the Respondent No. 1 having been given to the speech of Sri Angadi complained of by the Petitioner the consent of the Respondent No. 1 to Sri Angadi's alleged speech is neither alleged in the petition nor proved by the Petitioner. In the absence of consent, it will not bind the Respondent No. 1.

589. For the reasons stated above, I hold that the Petitioner has failed to prove the allegations mentioned in para 5 (d) (iii) of the petition.

590. *The next allegation is contained in para* 5 (d) (*iv*) *of the petition.*

591. The allegation mentioned in para 5 (d) (iv) of the petition is that in the issue of the Deshavani dated 14-2-1962, Sri G. V. Hallikeri, who campaigneered and canvassed for the Respondent No. 1, in a public meeting, styled the Petitioner as ' Ravana " and he called the Petitioner a " dog ".

592. The Respondent No. 1 has stated in para 37 of his written statement Ex. 36, that the allegations in para 5 (d) (iv) of the petition are not true and the contents are not admitted and it is not admitted that the persons referred to therein made the statements as alleged and that this Respondent is not directly or indirectly connected with any way and cannot be held in any way responsible for them and he has not been a consenting party to any false statement.

593. The above allegation is spoken to by the Petitioner P. W. 8, P. W. 34, P. W. 35, P. W. 46 and also by the Respondent No. 1 and R. W. 22. The relevant publication is Ex. 168 the issue of Deshavani dated 14-2-1962.

594. The Petitioner has given evidence that the issue of Deshavani dated 14-2-1962 (Ex. 168), it appears in the report or speech of Gudlappa Hallikeri that he had been referred to as " Ravana ", in the same meeting, it is reported that the Petitioner was referred to as a " dog " by Sri Nijalingappa. He has also given evidence that by ' Ravana ', the Petitioner understood to be a ' badmas ' or a bad man and that he does not know whether after killing ' Ravana ' Sri Rama underwent pravaschit (expiation); and that P.P. Umachagi, S.B. Kareppenavar, Malagi, Padmasa Siddalinga told him about that meeting. He has given further evidence that according to him, the word " dog " in Ex. 168 is used by Sri Nijalingappa with reference to the Petitioner.

595. P.W. 8 Adiveppa Hampannavar of Hulakoti has given evidence that he had read Ex. 168, the issue of Deshavani and he had read the description as Ranvana, as one who eloped with the wives of others. He has also given evidence that by reading such epithets against the Petitioner

the impression created on him was that the Petitioner was a bad man and that he read it to all and the same impression was created on his family people and bahubands. P.W. 8 has given evidence that he told these persons to whom he had gone for canvassing that they should vote for the Respondent No. 1. P.W. 8 has given further evidence that he had worked and canvassed for the Respondent No. 1 during the election as a Congress volunteer and he was getting Rs. 2 per day and a Gandhi cap.

596. P.W. 34 Koteppa Mallappa Kanavi has given evidence that the description of the Petitioner as 'Ravana' in Ex. 168 created an impression that the Petitioner was a bad man and on the whole, he was an evil person. He has also given evidence that if the word 'Ravana' used in the speech, that is to be interpreted in the context in which it is used.

597. P.W. 35 Hombali has given evidence that the expressions 'dog' and 'Ravana' in Ex. 168 were mean words used towards an individual that would be derogatory to the dignity of his paper and may land in litigation and therefore, he had struck them off and the report of that meeting was reported by his correspondent Haridas and that he (P.W. 35) did not think that he should publish the word 'Ravana' used by important persons like Sri Hallikeri and that he thinks it is a proverbial statement that the dog below a cart loaded with cotton would not be obscene to cite a proverb.

598. P.W. 46 Padachar Venkanachar Chintamani has also given evidence regarding the speeches of Sri Hallikeri and Sri S. Nijalingappa in that meeting. He has also given evidence that in that meeting Sri Hallikeri spoke and said that the Petitioner was a proud man like 'Ravana' and nobody should vote for him.

599. The Respondent No. 1 has given evidence that he had not approached the editors of Navanagarika and Deshavani requesting them to campaign and canvass for him and that they supported the congress at the election and the Respondent No. 1 happend to be the congress candidate. He has also given evidence that they have not published any article at his instance or with his consent. He has also given further evidence that Dr. Konnur is the editor of Navanagarika and that Sri Chanabaswami Hiremath is the editor of Deshavani and they were not his canvassing agents, and that they were congress men and they are congress men even now.

600. R.W. 22 Chanabaswami Hiremath has given evidence that the report of Ex. 168 about the election meeting is correct and that he attended that meeting.

601. I have got the relevant matter of Ex. 168, which is in Kannada, translated into English, and I think the translation has brought out correctly the tenor and the meaning of the above publication. I am citing

in my judgment only the relevant portions complained of by the Petitioner. The relevant portions of Ex. 168 are as hereunder :—

> " The meeting was presided by Sri G. V. Hallikeri. the President of the Propaganda Committee. At the commencement, about 40 institutions garlanded Sri Hallikeri and Sri Nijalingappa. Sarvashri Lingayya Limbayyanamath, Andanappa Manvi Murigeppa Manvi and Noorani were prominent amongst the garlanders.
>
> Sri S. Nijalingappa gave expression to his humility by saying that the welcome given to him was to the congress institution of which he was only a humble servant. He narrated the age old tradition of Indian Culture and to the aims and objects of the Congress, and then referring to the giving of the congress ticket said—800 applications were received for 208 seats of Legislative Assemblies. They were scrutinised on the District and State Levels and forwarded to the Centre. 12 people of which I was one, including Sri Nehru were to study the question. The decision was by majority. There were five applicants from Gadag. Except Sri K. P Gadag, the rest did not get a ticket. Still, the others excluding Sri K. H. Patil have not felt dissatisfied and are making congress propaganda going from village to village. This is loyalty to Congress. It is conceit to presume that whatever is accomplished is by me. An illustration is this :—A pair of bullocks are drawing a cart filled with cotton bales but a dog moving under the cart may boast that it is bearing the burden of the cart and also of the cotton bales. If accordingly, an individual who is the chairman of some institution and an authority in a society were to say that he has done everything and is going to do everything, it sounds ridiculous.
>
> Some people without principle have mixed themselves with others who follow principles to attain their own selfish ends. Some such people went out of the congress as they did not get a ticket. The Congress will not be a loser, if some 10—20 people or even hundreds of such people go out of the congress. On the other hand, the number of people without principles will decrease."

Then the Chairman of the meeting, the brave and strong Sri Hallikeri Gudleppa made his closing speech. He said that he felt happy at seeing the loyalty and love for the congress of the children, women and men of Gadag-Betgeri. The love of Betgeri people for the Congress has been unfailing. Betgeri people were in large numbers at the time of the fight for freedom. I have not seen the least doubt that you will get success for the Congress by a huge majority.

Proceeding Sri Gudleppa said : " Some persons of authority in Gadag have adopted an attitude of conceit like 'Ravana' and are exhibiting pride and despotism. There will henceforward be no room for such

despotism. Sometime back I and our respected president, Sri Nijalingappa, had been to Hulakoti at the time of T.D.B. Election. At that time, many houses were got locked and all people were sent out, as if, some villagers were dead. I have proclaimed that so far as congress is concerned he had died then only. He himself dug his grave of political life for himself. Now, that he has gone out of the congress because he did not get a ticket and is contesting the election against the congress, the grave of his political life is complete. There is no power left in him. He is just like a puppet of wax. No merchant of Gadag-Betgeri need be afraid of him should not be afraid. If your licence is cancelled or threatened to be cancelled, or if any other threat is held out or exhibit aggression, I shall see that it is immediately set right."

602. It was contended by the learned advocate for the Petitioner that at the time of the speech of Sri Hallikeri and Sri Nijalingappa, the then President of the D.C.C. was Sri Hallikeri, the then President of M.P.C.C. was Sri S. Nijalingappa and then President of the T.C.C. was the Respondent No. 1. Those speeches in that meeting were made in the presence of such prominent office bearers of the Congress Organisation and according to Ex. 168, about 20 thousand persons were present and the tempo was very high and that in such a meeting the Petitioner had been referred to as 'Ravana' and 'dog' which means the Petitioner was a very undesirable person to be voted. He has also urged that the expression 'dog' had been used as an anology, but the reference is made to the Petitioner and by referring the Petitioner to a 'dog', Sri Nijalingappa had ridiculed the Petitioner and brought the Petitioner down in the estimates of the voters. It may be that the Petitioner had been bragging and barking like a dog that the Petitioner was pulling the weight or carrying the load ; while all the time the Petitioner was only a dog under the cart and that it was only the pair of the bullocks which had been pulling the weight or had been carrying the load, it should have been shown by the Respondent No. 1 that the Petitioner was bragging and telling others that he (the Petitioner) was responsible for all the work done by him and therefore, the statement that the Petitioner was telling others that he was responsible for the work done in the A.P.M.C. and Gadag Cotton Sale Society is false.

603. What has been said by Sri Hallikeri in that meeting is that some persons of the authority in Gadag have adopted an attitude conceit like 'Ravana' and were exhibiting pride and despotism and that there would be no room for such despotism hereinafter. The expression Ravana, the context itself shows that it was used to connote arrogance. Ravana may have many a good and bad things. The speech shows that Ravana was meant proud and powerful in the context in which that expression was used in that meeting by Sri Hallikeri. The manner in which that allegation had been made against a group and not made against any particular individual. The impression that might have created is that the Petitioner was a bad man, it is against him made as

a public man and it was not an attack on his personal character, and the Petitioner is a public man, as he himself admits in his evidence that he had held various offices in the public offices. It cannot be construed as a personal attack.

604. The reference to a dog is made by Sri S. Nijalingappa, the then President of the M.P.C.C. and not by Sri Hallikeri who is named in the petition. It is an illustration on the face of it. There is enough materials on record to show that the Petitioner was an ex-congress man and he had left the Congress Organisation. There is nothing wrong in what either Sri Hallikeri or Sri Nijalingappa had said in that meeting. There is no allegation that the speeches were made with the consent of the Respondent No. 1. The editor, R.W. 22 Chanabaswami Hiremath, has not admitted any corrupt practice, because he had only published the report of the meeting and it is not challenged that what was complained of by the Petitioner was an incorrect publication.

605. The evidence of P. W. 35 was all from the memory, as admittedly the notes made on the report of that meeting had been destroyed and P. W. 35 Hombali had not attended that meeting. The person who attended that meeting, namely, Haridas who had given the report of this meeting has not been examined by the Petitioner. P. W. 8 Adiveppa has not been mentioned in the petition nor spoken to by the Petitioner in his evidence and P. W. 8 appears to be a partisan and interested witness. The other witnesses examined on this point by the Petitioner are also interested and I cannot accept their testimony on this point as reliable as they are unreliable witnesses. The petitioner and his witnesses have failed to establish that the statements were false and that the publisher knew that the publication was false or at any rate, he know that those statements were not true.

606. For the reasons stated above, I hold that the Petitioner has failed to prove the allegations mentioned in para 5(*d*) (iv) of the petition.

607. *The next allegation is mentioned in para* 5(*d*) (v) *of the petition.*

608. The allegation contained in para 5(*d*) (v) of the petition is that in the issue of Deshavani dated 17th February 1962, Sri F. M. N Baradwad called the Petitioner an evil spirit and the editor of the said paper, in his speech, has said as reported by him therein that the Petitioner has been making personal profits for himself.

609. The Respondent No. 1 has stated in his written statement in para 37 of Ex. 36 that the allegations in para 5(*d*) (v) of the petition are not true and the contents are not admitted, and it is not admitted that the persons referred to therein made the statements as alleged. Further, this Respondent is not directly or indirectly connected in any way

cannot be held in any way responsible for them, and he has not been a consenting party to any false statement.

610. The above allegation is spoken to by the Petitioner, P. W. 34 and also by the Respondent No. 1 and R.W. 22 and the relevant document is Ex. 170 dated 17th February 1962 in which is published the reported speech dated 15th February 1962.

611. The Petitioner has given evidence that in the issue of Deshavani dated 17th February 1962 (Ex. 170), Sri Baradwad had called him an evil spirit and that the editor of that paper had said in the speech reported by him that the Petitioner had been making personal profits for himself. He has also given evidence that while Sri Baradwad was referring him as an evil spirit, he had also been referred to by the expression 'Dusta Shakti".

612. P. W. 34 Kanavi has given evidence that he read the report Ex. 170 and the description of evil force created want of confidence in the Petitioner and therefore created a bad impression.

613. The Respondent No. 1 has given evidence that he was present in the meeting reported in Ex. 170 where the Petitioner is reported to as 'Dusta Shakti' He has also given evidence that although according to the high moral standards of the model of which the Respondent No. 1 the election of his were to be conducted, the above epithet would not confirm to that standard having regard to the heat in the atmosphere of the election and he thought them to be unavoidable.

614. R. W. 22 Chanabaswami Hiremath has given evidence that the report of the meeting is correct.

615. The speech in Ex. 170 is correctly reported, as the correctness of it is not at all challenged or disputed by the Petitioner. The expression "Dusta shakti" is not at all objectionable. The publication does not refer to any party or person. The reference is general. The terms "Dusta shakti" though may not be of a high moral standard, is not at all objectionable. The phrase has also been used by the Petitioner in Ex. 215 Nagarika daily paper. The allegations in Ex. 170 in the report is not directed against the Petitioner, but generally against those who stood against the congress party in the election. The publication has been made by the editor, R. W. 22 Chanabaswamy Hiremath, and the publication has been made in the plural sense and the publication says that those candidates would get a personal advantage for themselves. It is mentioned in the petition that "the Petitioner has been making personal profits for himself." The allegations in the petition is incorrect, on a bear reading of the publication Ex. 170. In any event, the Respondent No. 1 cannot be held responsible. as no consent is alleged or suggested or proved. (17 E. L. R. 243 equals A. I. R. 1959 Assam 139).

616. For the reasons stated above, I hold that the Petitioner has failed to prove the allegations mentioned in para 5(*d*) (v) of the petition.

617. *The next allegation mentioned is in para* 5(*d*) (vi) *of the petition.*

618. The allegation contained in para 5(*d*) (vi) of the petition is that in the issue of the Deshavani dated 20th February 1962, a pamphlet issued by Janasangh, has been published confining it to excerpts against the Petitioner, in which it was falsely stated that the Petitioner appointed his own brother as engineer, while the fact is that the person concerned is the lent hand by the Government ; so also a false statement that the vehicles of Sale Society and the Agricultural Produce Market Committee were used by the Petitioner for his election ering. The false statement adverted to hereinbefore with regard to false charge of hooliganism published in the Deshavani dated 9th February 1962 has been published in the Navanagarika of even date.

619. The Respondent No. 1 has stated in para 37 of his written statement, Ex. 36, that the allegations in para 5 (d) (vi) of the petition are not proved and the contents are not admitted and it is not admitted that the persons referred to therein made the statements as alleged. Further, this Respondent is not directly or indirectly connected in any way and cannot be held responsible in any way for them. He has not been a consenting party to any false statement.

620. This is spoken to by the Petitioner, the Respondent No. 1 and R.W. 22 and the relevant publications are Ex. 172, the issue of Deshavani dated 20-2-1962, Ex. 164, the issue of Deshavani dated 9-2-1962 and Ex. 186, the issue of Navanagarika dated 9-2-1962.

621. The Petitioner has given evidence that in Ex. 172, the issue of Deshavani dated 20-2-1962, it has been falsely alleged that he had appointted his brother as Engineer and vehicles of the Sale Society and Market Producing Committee were used by him for his election purposes. In Ex. 164, the issue of Deshavani dated 9-2-1962, he has been called a 'gunda' in the speech of Sri Jatti which is false. He has also given evidence that Dr. Jalihal was a Janasangh candidate during the election and in the appeal of the Janasangh Party, has published a pamphlet Ex. 202 and that what is referred to therein as the obstinacy of staunch congress does not refer to him and that refers to a party formed as staunch congress men. He has also given evidence that the para referring to K. H. Patil, refers to him and the party of staunch congress men was formed by those who had formed a party remaining in the congress without resigning from the congress and that he had resigned from the congress before submitting his nomination paper, and that there is no party called the staunch congress party recognised by the Government.

622. The Respondent No. 1 has given evidence that he had not approached the editors of Navanagarika and Deshavani requesting them to campaign and canvass for him and those editors supported the congress at the election and he happened to be the congress candidate. He has also given evidence that they have not published any article at his instance or with his consent. He has also given evidence that he did not distribute copies of Navanagarika and Deshavani in Gadag-Betgeri or in other villages and that Dr. Konnur is the editor of Navanagarika and Sri Chanabaswami Hiremath is the editor of Deshavani, and that they were not his cavassing agents. They were congress men and that they are congress men even now.

623. R.W. 22 Chanabaswami Hiremath, the editor of Deshavani Paper has given evidence that on 7-2-1962, there was a meeting at Betgeri when Sri Jatti, came, and that either Sri Patil or Sri Hosmath reported about it in Ex. 164. He has also given evidence that the report in Ex. 172 under the heading "a congress procession in Gadag" was by Sri Patil and that it was Sri Patil who has reported in Ex. 172 under the caption "Independent candidate cannot get any single vote from Sahapurpeth" and that the independent candidate refers to the Petitioner.

624. There are materials to show that the brother of the Petitioner had been appointed as an Engineer in the Gadag Oil Seeds Processing Association and that Association has been sponsored by the Petitioner. It is but natural that people may entertain suspicion that the Petitioner was responsible for the appointment of his brother in that association or society, because that association has been sponsored by the Petitioner. There is also evidence that his brother is a Government Servant whose services have been lent by the Government to that Society and so, there is some foundation for the mention of the name of the Petitioner in the pamphlet, Ex. 202, issued by the Janasangh, in connection with his brother during the time of election. The pamphlet of Janasangh referred to is Ex. 202 dated 18-2-1962 and a portion of it has been referred to in the issue of Deshavani, Ex. 172, under the heading "The opinion of Jansangh regarding Sri K. H. Patil," and all the allegations mentioned about the Petitioner in Ex. 202 have been in verbatim reproduced under that caption in Ex. 172. The contents show that the Petitioner is a part of the congress men as belonging to the group of 'Nishtavant' congress opposing the congress. The reference to the Petitioner has been made in that pamphlet (Ex. 202) as a public man and not as a private individual.

625. The Petitioner has not aduced any convincing evidence of a satisfactory nature to show that the person who had published that publication had believed that the statement so published was false or at any rate the statement should not have been believed to be true and the burden of proving each of the ingradients is on the Petitioner who challenges the validity of the election. A mere allegation in the election petition that the returned candidate had committed a corrupt practice falling

under Section 123 (4) of the R. P. Act is not sufficient compliance with the requirement of the law. (1964 Mysore Law Journal Page 438).

626. When the editor has no reasons to believe that contents of an article is not true, the editor himself is not liable. It must be shown by the Petitioner that at the time article was published, the editor knew that the contents of an article complained of was false, or at least believed them to be not true. If an article is published, before making the returned candidate responsible for that article, it must be shown that the article in question was published with the consent of the returned candidate. (A.I.R. 1958 Assam 97, A.I.R. 1959 Assam 139 equals 17 E.L.R. 243 (at page 249), 8 E.L.R. 265 (at page 279), 10 E.L.R. 376, A.I.R. 1960 Punjab 45, 15 E.L.R. 358, A.I.R. 1961 Mysore 106). Absolutely no consent of the Respondent No. 1 to the above publication is either alleged in the petition or suggested or proved in the evidence of the Petitioner and his witnesses.

627. The allegations made in Ex. 164 (Deshavani dated 9-2-1962), Ex. 186 (Navanagarika dated 9-2-1962) are with reference to the pelting of stones in Sri Jatti's meeting of 7-2-1962 which I have already dealt with while considering the allegation mentioned in para 5 (d) (iii) of the petition. I adopt the same reasoning as mentioned in that allegation.

628. The Petitioner and his witnesses have failed to bring home the guilt of the Respondent No. 1 with respect to the allegations mentioned in para 5(*d*) (ii) of the petition and the evidence placed on this point cannot be accepted, as it is unreliable.

629. For the reasons stated above, I hold that the Petitioner has failed to prove the allegations mentioned in para 5(*d*) (vi) of the petition.

630. *The next allegation is mentioned in para* 5(*d*) (vii) *of the petition.*

631. The allegation in para 5(*d*) (vii) of the petition is that in the issue of the Navanagarika dated 16th February 1962, it is falsely stated in the editorial that the Petitioner is the self centered hypocrit.

632. The Respondent No. 1 has stated in para 37 of the written statement Ex. 36 that the allegations in para 5(*d*) (vii) of the petition are not true and the contents are not admitted and it is not admitted that the persons referred to therein made the statements as alleged. Further, this Respondent is not directly or indirectly connected in any way and cannot be held in any way responsible for them and he has not been a consenting party to any false statement.

633. The above allegation is spoken to by the Petitioner, Respondent No. 1 and R. W. 18 and the relevant publications Ex. 192, the issue of Navanagarika dated 16th February 1962.

flattened himself on congress funds, have been made.

641. The Respondent No. 1 has stated in para 37 of his written statement Ex. 36 that the allegations in para 5(*d*) (viii) of the petition are not true and the contents are not admitted ; it is not admitted that the persons referred to therein made the statements as alleged. Further, this Respondent is not directly or indirectly connected in any way and cannot be held in any way responsible for them. He has not been a consenting party to any false statement.

642. The above allegation is spoken to by the Petitioner, Respondent No. 1 and R.W. 18. The relevant publication is Ex. 196, the issue of Navanagarika, dated 20th February 1962.

643. The Petitioner has given evidence that in the issue of Navanagarika dated 20th February 1962 (Ex. 196), it is alleged that he had appropriated grants from the Ministers and fattened himself on congress funds.

644. The Respondent No. 1 has given evidence that he does not know any instances of the Petitioner having fattened himself on congress funds and he would not say so.

645. P.W. 18, Dr. Konnur, the editor of Navanagarika daily paper, has given evidence that the article Ex. 196, under the caption "A challenge to staunch candidates of Gadag, blaming the congress," was sent by somebody and that indirectly the article Ex. 196 under the said caption may apply to the Petitioner, if the cap suits him, and he might wear it. He has given evidence that he is not aware that the Petitioner was calling himself a staunch (Nishtavant) congress man. He has given further evidence that generally an editor is responsible for everything that appears in his paper, but not for the views expressed by others in that paper.

646. The article appearing in Ex. 196 is not a personal article, even if that article indirectly applies to the Petitioner, it is not a personal attack, it may be an attack only as a public figure or as a politician. The article does not say that anybody used funds for himself, but the grants were contributed to institutions. The only allegation is that the Petitioner was managing the institution, as if it was his own house and as if it belongs to him. The object of the article complained of is directed against persons who have been blaming the congress. Even if it were to be applied to the Petitioner, it was referred to him as a public man and not as an individual. The Respondent No. 1, at any rate, is not responsible for that article, as no consent is alleged or proved or suggested.

647. For the reasons stated above, I hold that the Petitioner has failed to prove the allegations mentioned in para 5(*d*) (*viii*) of the petition.

648. *The next allegation and the last allegation with respect to issue No. 4 is the allegation mentioned in para* 5(*d*) (*ix*) *of the petition.*

649. The allegation contained in para 5(*d*) (*ix*) of the petition is that in a public meeting held on 26th January 1962, Sri F. M. Baradwad who presided over that meeting made a false statement that the Petitioner has misappropriated three and a half lakhs.

650. The Respondent No. 1 has stated in para 37 of his written statement Ex. 36 that the allegations in para 5(*d*) (*ix*) are not true and

the contents are not admitted and it is not admitted that the persons referred to therein made the statements as alleged. Further, this Respondent is not directly or indirectly connected in any way and cannot be held in anyway responsible for them. He had not been a consenting party to any false statement.

651. The above allegation is spoken to by the Petitioner, P.W. 34, P.W. 35, P.W. 57, P.W. 64 and the Respondent No. 1.

625. The Petitioner has given evidence that in a public meeting held on 26th January 1962, in Betgeri, Sri Baradwad made a false representation that he had misappropriated three and a half lakhs of rupees and that Respondent No. 1 was present at that meeting. He has also given evidence that it appreared in Ex. 175 and Ex. 214, the issue of the newspapers. He has given further evidence that he had not attended that meeting and that Sri Malagi and Kautal told him about it.

626. P.W. 34 Kanavi has given evidence that the statement in Ex. 157 (Deshavani dated 1st February 1962) that the Petitioner had misappropriated Rupees three and a half lakhs created a bad impression on the voters. That the Petitioner is one misappropriating monies. P.W. 35 Hombali has given evidence that in the meeting of 22nd January 1962, there was also a reference to the A.P.M.C. and that there was malpractice that three and a half lakhs of rupees were misappropriated there and that Sri Baradwad said these things and that he had not reported about the misappropriation of three and a half lakhs of rupees in his Nagarika paper.

627. P.W. 57 Nagappa Kelsad (a barber from Betgeri) has given evidence that he had attended the meeting of 26th January 1962 and that Sri Baradwad who was the President of that meeting said that the Petitioner had misappropriated three and a half lakhs of rupees and what he was deposing was from his memory. He has also given evidence that he thought that he should not vote for the Petitioner, if he had misappropriated three and a half lakhs of rupees and he went to ask about it. P.W. 23 Channappa Harlapur has corroborated the evidence of P.W. 57 with reference to the three and half lakhs of rupees. P.W. 64 Malagi has given evidence that he had attended the meeting of 26th January 1962 at Betgeri and he corroborates the evidence of the other witnesses on this point regarding Rupees three and a half lakhs.

628. The Respondent No. 1 has given evidence that he did not know about the Petitioner having misappropriated Rupees three and a half lakhs.

629. There is no allegation to any publication either in the Deshavani or Navanagarika papers. It is an allegation against Baradwad personally. No consent of the Respondent No. 1 is either alleged or proved.

The issue of the papers are referred to for the first time by the Petitioner only in his cross-examination and the papers referred to are Ex. 175 Navanagarika of the issue of 28th January 1962 and Ex. 214, Nagarika of the issue of 28th January 1962. The Respondent No. 1's speech is reported in Ex. 175 and also the Presidential speech of Sri Baradwad. In Ex. 175, there is absolutely no allegation in the speech of Sri Baradwad about three and a half lakhs of rupees. Absolutely, no reference is made by him to three and a half lakhs of rupees or to the Petitioner. Even in Ex. 214, the speech of Baradwad is reported, but in his speech, there is absolutely no reference made to Rupeess three and half lakhs or to the Petitioner.

630. Admittedly, the petitioner had not attended the meeting of 26th January 1962. Even if something about the allegation was said in that meeting, nobody took any notice of it in token whereof, none of the papers had published about three and a half lakhs of rupees. The Petitioner has attempted to prove this allegation by oral evidence.

631. It is not proved that the above allegation of Rupees three and half lakhs was said by Sri Baradwad. The oral evidence cannot be believed, as the speech is not published in any of the papers. Even assuming that something like that allegation was said, it was so unimportant that it did not draw the attention of the press-reporters. P.W. 34 and P.W. 35 did not attend that meeting. P.W. 23, P.W. 57 and P.W. 64 say that they attended that meeting, but their evidence cannot be relied upon, as they appear to be partisan witnesses highly interested in the Petitioner P.W. 35 is an editor, P.W. 64 is a newspaper correspondent and they are friends, and P.W. 34, P.W. 35 and P.W. 64 are strong supporters of the Petitioner during his election and the evidence of P.W. 23 and P.W. 57 appear to be interested and tainted also. The evidence of these witnesses cannot be relied upon. Even if it was held to be true, at the earliest opportunity, the Respondent No. 1 had absolved himself from his responsibility. The Respondent No. 1 is not responsible, as no consent is alleged, suggested or proved. I cannot accept the evidence of the Petitioner and his witnesses.

632. For the reasons stated above, I hold that the Petitioner has failed to prove the allegations contained in para 5 (*d*) (*ix*) of the petition.

633. In this Issue No. 4, ten allegations have been mentioned, but the particulars of para 5 (*d*) series mention only nine allegations as could be seen from the petition. Perhaps, the tenth allegation mentioned in Issue No. 4 is by oversight or by mistake.

634. In the result, I hold that the Petitioner has failed to prove all the allegations mentioned in Issue No. 4.

Issue No. 5.

635. *Does the Petitioner prove corrupt practice under Section* 123 (5) *of the R. P. Act as alleged in paragraphs* 4 (*e*) *and* 5 (*e*) (*i*), (*ii*), (*iii*) *and* (*iv*) *of the petition?*

636. Under Section 123 (5) of the R. P. Act, the essential features of corrupt practice are : (1) there must be a hiring or procuring of vehicles or vessels, (2) it must be for the conveyance of any elector to or from any polling station, and (3) even joint hiring or procuring by several electors would be a corrupt practice, if the vehicle or vessel is propelled by mechanical power. It is the act of hiring or procuring that the constitutes the corrupt practice, not the actual conveyance of voters. Mere proof of conveyance of voters is not enough, the act of hiring or procuring must also be proved. If the fact of hiring or procuring is alleged, it is not necessary to allege the particulars about the contract or hiring in an election petition. (22 E. L. R. 273 Supreme Court decision) The onus always remains on the Petitioner to prove his allegation and he cannot wait for the defence to produce material witnesses. He cannot say that certain witnesses should have been examined in rebuttal by the returning candidate or that an inference may be drawn against him. (18 E. L. R. 145).

637. I will now proceed to consider the allegations contained in paras 5 (*e*) (*i*) to (*iv*) of the petition separately.

638. *The allegation contained in para* 5 (*e*) (*i*) *of the petition.*

639. The allegation contained in para 5 (*e*) (*i*) of the petition is that atleast 80 tongas were hired by the Respondent No. 1 in which voters were taken to and from the Polling Stations on the polling day for voting by the tongawallas who acted as agents of the Respondent No. 1 for the said purpose.

640. The Respondent No. 1 has stated in para 38 of his written statement Ex. 36 that the allegations in para 5 (*e*) (*i*) to (*iv*) are not true. This Respondent had not taken any voters to or from the polling stations nor had he authorised anybody to take voters to or from the polling stations and the allegations made in the said paras are denied and further, this Respondent cannot be held responsible for any unauthorised acts by other persons.

641. The above allegation in para 5 (*e*) (*i*) of the petition is spoken to by the Petitioner, P. W. 46, P. W. 48 and P. W. 65 and also by the Respondent No. 1 and R. W. 30.

642. The Petitioner has given evidence that on the polling day, 80 tongas were hired by the Respondent No. 1 and the voters were taken

to the polling stations and back and that the tongawallas acted as the agents of the Respondent No. 1 and they had also canvassed votes for the Respondent No. 1. He has also given evidence that P. V. Chintamani told him about the 80 tongas having been hired by the Respondent No. 1 on the polling day and that information was given to him at Gadag after the election.

643. P. W. 46 Chintamani has given evidence that when Sri Nijalingappa's procession was going on, on 12-2-1962, he went that procession and out of curiosity asked as to how much was spent and one Kallappa Agasimani talked to him about it and also enquired with a tongawalla named Nabi of Gadag who told him that the tongawallas had to work till the election was over and that it had been agreed to pay Rs. 30 to each tongawalla and that the agreement was that the tongawallas should have boards "Vote for Sri K. P. Gadag" on both sides of their tongas and also they were to take the voters to the polling stations on the polling day. P. W. 46 has also given evidence that on the polling day, he wanted a tonga and he enquired with two or three tongawallas, but he could not get any tonga and that the tongawallas told him that the Respondent No. 1 had told those tongawallas not to take any other hire.

644. P. W. 48 Siddappa Gurubasappanavar has given evidence that on the polling day, he went in search of a tonga, but he did not get any tonga at the tonga stand and when he was returning to his house, one or two tongas were standing without any passengers in them and that when asked for the tongas, stating that there was urgent need to go to the Railway Station, he (P. W. 48) was informed that the Respondent No. 1 had engaged them to call the voters and therefore, they would not take any others. He has also given evidence that one Siddaramappa Badigemmanavar from his lands who was the canvassing agent of the Respondent No. 1 came, sat and went away in that tonga and so he thought that he (Siddaramappa Badigemmanavar) must have gone to call the voters. He has given further evidence that he took a camera from the house of one Karadakatti, stood there for about half an hour or three-fourths of an hour and when Siddaramappa came in that tonga, there was a woman named Bagirathi Bai in the rear portion of that tonga and he took out a photo on seeing that woman ; then he, (P. W. 48) followed them fast to see where they (Siddaramappa and that Woman) were going and he saw them getting near the polling station, and he took another photo when they were getting down. He has also given evidence that about six or seven days after the election, he gave the photos to the Petitioner as per his request. He has given further evidence that he was the polling agent of the Petitioner at the 25th polling station.

645. P. W. 65 Gangaram Doddamani (a tongawalla of Betgeri) has given evidence that one Jayaramasing told him that 88 tongas had been agreed to with the Respondent No. 1 in connection with the election and the tongawallas were told to go on the polling day with the tongas

to call the voters and that the said Jayaramasing told him that Rs. 30 were settled for each tonga and that on the polling day, the tongawallas went to the house of the Respondent No. 1 with tongas and the Respondent No. 1 told him to go to the first ward and to meet his agent Laxamanasa Bangi there and according to his instructions, P. W. 65 went to the First Ward. He has also given evidence that Jayaramasing who is his friend told him about 15 days before the polling day about the tongas being required as mentioned above and that there is an association of tongawallas of which Tipusing was its Chairman and that Jayaramasing was not the member of that association.

646. The Respondent No. 1 has given evidence that the had not engaged any tongas to take the voters to the polling station and back and that he knows Tipusing who came and told him about his statement in the news paper made during the election time. R. W. 30 Tipusing has given evidence that he was the chairman of the tongawalla Association at Gadag-Betgeri and that the Respondent No. 1 had not hired his tonga during the election.

647. It has been contended by the Petitioner's advocate that the case of the Petitioner in his election petition is that 80 tongas were hired by the Respondent No. 1 in which voters were taken to and from the Polling Stations on the polling day for voting and that in the written statement at para 38 of Ex. 36, the Respondent No. 1 has made a general denial of the allegations mentioned in para 5 (*e*) (*i*) to (*iv*) of the petition. He urged that what is denied in para 38 of the his written statement is conveying the voters and that the fact of having procured or hired the tongas or carts has not at all been specifically denied by the Respondent No. 1 in para 38 of his written statement Ex. 36 and therefore, it must be taken as an admission under rules 3, 4 and 5 of Order 8 of the C. P. C., as there is no reference to procuring or hiring at all in para 38 of his written statement.

648. He has further urged that a mere statement that a particular of the plaint is not admitted is not a proper compliance with the rules 3, 4 and 5 of order 8 of the C.P.C. and the allegation of fact must be specially dealt with under rule 5 of Order 8 C.P.C. and every allegation of fact in a plaint must be taken as admitted unless denied or stated to be not admitted in the pleading of the Respondent No. 1. The learned advocate for the Petitioner cited the decision reported in A.I.R. 1925. Madras 950 in support of his contention.

649. It has to be admitted that the allegations made in para 4(*e*) of the petition and the particulars of those allegations mentioned in para 5(*e*) (*i*) to (*iv*) of the petition must be read together, as these two paras from part and partial of the same facts in issue ; the former para 4(*e*) being the charge and the latter para 5(*e*) (*i*) to (*iv*) being the particulars or instances of the charge referred to in para 4(*e*) of the petition. In

para 8 of the written statement at Ex. 36, the Respondent No. 1 has stated that the allegations in para 4(*e*) of the petition are wholly untrue and are denied in toto and that this Respondent is not guilty of corrupt practice of hiring or procuring or payment or otherwise vehicles by himself or with his consent by any other persons, for the conveyance of electors to or from the polling stations or booths. The Respondent No. 1 has also stated in para 41 of his written statement that the allegations are many, and if any of the allegations are not expressly denied, it should not be taken as admitted by the Respondent No. 1.

650. It must be remembered while considering this point that every election petition will have to be tried as nearly as may be in accordance with the provisions laid down for the trial of suits by the Code of Civil Procedure Code, but this willbe subject to the provisions of the R.P. Act or any rules made under it. Under the R.P. Act, an enquiry on an election petition is quasi-criminal in nature (A.I.R. 1957 Supreme Court 444). The tribunal is bound to consider the statement of the Respondent on oath (4 E.L.R. 380). The election petition is to be tried in accordance with the procedure applicable to civil suits, but the standard of proof for proving corrupt practice is that as required in criminal cases.

651. In the instant case, the statement of the Respondent No. 1 in his written statement made in paras 8, 38 and 41 taken together meets the point raised by the Petitioner in paras 5(*e*) (*i*) to (*iv*) read with para 4(*e*) of the petition. A recital in the written statement that a certain allegation in the plaint is not admitted cannot be deemed to be an admission, but amounts to denial by necessary implication. (55 Allahabad 700). Therefore, I am unable to accept the contention of the learned advocate for the Petitioner on this point and therefore, I held that there is no admission under the rules of Order 8 C.P.C. and the decision reported in A.I.R. 1925 Madras 950 is not applicable to the facts and circumstances of this case. (Also refer para 6 of that decision).

652. In so far as the allegation contained in para 5(*e*) (*i*) of the petition is concerned, none of the witnesses are named in the petition. The Petitioner has no personal knowledge of this allegation in view of his verification to the petition. P.W. 46 P. V. Chintamani has given evidence that he does not poke his nose in others, affairs, he does not take much part in the election and he did not support the Petitioner in his election. But, his evidence shows that he is very much interested in the Petitioner in making alleged enquiry regarding Sri Nijalingappa's procession from Kallappa and about the alleged hiring of tongas from one Nabi. P.W. 46 though he had not worked for the Petitioner, he is made to swear on many points. P.W. 46 admits that one K. V. Chintamani is his brother, that they are joint and that R. S. Chintamani stays separately, showing thereby that R. S. Chintamani is one of the family members of his and yet he (P.W. 46) pretends that he does not know if R. S. Chintaman supported the Petitioner during the election, and whether R. S. Chintaman

was the polling agent of the Petitioner. Ex. 266 shows that this R. S. Chintamani was the polling agent of the Petitioner in the Polling Station No. 29.

653. Further, the evidence of P.W. 46 regarding the enquiries made in respect of the hiring of tongas and his story that he wanted to go in a tonga for meals to his house from his shop which is at a distance of two furlongs on the polling day, appears to be very improbable.

654. P. W. 48 Siddappa is admittedly a polling agent of the Petitioner as per his own evidence and therefore he is an interested witness. The story of P.W. 48 that he wanted the tonga on the polling day urgently to enable his sister's son to go to the station and his evidence that he had waited for half an hour to 3/4th of an hour waiting for the return of Sidramappa in that tonga appears to be against the normal course of human conduct, and further P.W. 48 appears to be a Bakale man who has supported the Petitioner in the election and whose photo can be seen in the picture Ex. 257 in the newspaper. P.W. 48 is only 38 years old with a good eyesight and yet, he pretends that he cannot spot out the person in Ex. 257 in whose firm he works as a Maistry. P.W. 48 was a polling agent of the Petitioner and attending the Polling Station before noon and before the closing of the day. Still, no complaint in writing had been lodged regarding the hiring of the tongas by the Respondent No. 1. P.W 48 says that the object of taking the photo referred to in his evidence was to identify the voter and the taker, and if it were true, P.W. 48 would have focussed it accordingly. He admits that he knows about taking photos and focussing photos and yet there is absolutely very unsatisfactory evidence regarding the taking of photo and the photos produced before this tribunal. There is a semblance of artificiality in the evidence of P.W. 46, P.W. 48 and P.W. 65. I am not at all convinced with the evidence of these witnesses as they appear to be chance witnesses. Sl. Nos. 2 and 3 with Ex. 43 are the photos, the negatives are misled and could not be traced and so could not be produced ; in other words they were lost. Hence, the photos produced are admissible under Section 65(*c*) of the Indian Evidence Act. They are permitted to be admitted and they are directed to be marked as Ex. 420-A and Ex. 420-B. The photos produced in connection with this point appears to be very suspicious and I cannot believe them.

655. For the reasons stated above, I hold that the Petitioner has failed to prove the allegation contained in para 5(*e*) (i) of the petition.

656. *The next allegation is contained in para* 5(*e*) (ii) *of the petition.*

657. The allegation contained in para 5(*e*) (ii) of the petition is that four bullock carts were hired by the Respondent No. 1's agent, Sri Vitaladas Amichand of Betgeri in which voters from Narasapur were carried to Betgeri polling stations and back.

658. The Respondent No. 1 has stated in para 38 of his written statement Ex. 36 which I have already referred to in the allegation in 5(e) (i) of the petition. The same written statement is applicable to this allegation also.

659. This allegation is spoken to by the Petitioner, P.W. 12, P.W. 20, P.W. 26, P.W. 27, P.W. 61 and also by the Respondent No. 1.

660. The Petitioner has given evidence that Narasapur village was included in the 11th Polling Station of Betgeri Ward and that Vitaladas Amichand, the polling agent of the Respondent No. 1, had hired four carts to bring the voters to the polling station and send them back home. He has also given evidence that Bagodi Gulappa and Giddappa Abbigeri informed him about the above after the election.

661. P.W. 12 Ningappa Patted of Betgeri has given evidence that Vitaladas Amichand was the polling agent for the Respondent No. 1 and was also canvassing votes for him and that on the polling day, voters from Narasapur had come in four carts and that the names of two of these cartsmen are Sivappa Vadahalli and Veerabhadrappa Halakatti and both of them are from Narasapur. He has given evidence that he enquired with these two persons why the carts had been brought, for which they replied that Vitaladas Amichand had paid the fare and he had asked them to bring the carts and accordingly, they had done so.

662. P.W. 26 Sivappa Vadahalli of Narasapur has given evidence that a day prior to the polling day, Vitaladas Amichand and Sannagouder Naganagouda had come to his village, on behalf of the Respondent No. 1 and called him and one Nagappa Betgeri, Parameshwarappa, Veerabhadrappa Halakatti were there and Vitaladas told them that he wanted four carts for the next day and that they agreed to go on a hire charge of Rs. 5 per cart and Vitaladas paid Rs. 20 for their four carts and that on the polling day, they took out the carts and about 10 or 12 persons were seated in each cart and they went to the polling station at Betgeri and came back to their village. He has also given evidence that he had supported the Petitioner in the election.

663. P.W. 27 Veerabhadrappa Halakatti of Narasapur has corroborated the evidence of P.W. 26 in material particulars on this point.

664. The Respondent No. 1 has given evidence that neither he nor Amichand Vitaladas made arrangements to bring the voters to Betgeri polling station by conveyance from Narasapur and that Narasapur is four or five furlongs from Betgeri as only a nalla divides the two places. He has also given evidence that P.W. 12 Ningappa Patted is deposing falsely as he is an underling of Sri Kanavi, P.W. 34 the Municipal President of Gadag-Betgeri who is the friend of the Petitioner, and that what P.W. 26, P.W. 27 and P.W. 61 have stated is false and

that they have deposed falsely as they are the underlings of the President Sri Kanavi who is the friend of the Petitioner.

665. P.W. 12 Ningappa Patted has no previous acquaintence with the Respondent No. 1 and he has no connection with Vitaladas Amichand except that he was the classmate of his in the Primary School. The story of P. W. 12 as a whole appears to be very improbable. The Petitioner and also P.W. 12 says that they had no talk with each other. The evidence of the Respondent No. 1 that P.W. 12 is deposing falsely as he is the underling of P.W. 34 Kanavi who is both the President of the Municipality and a friend of the Petitioner has not been challenged by the Petitioner. Admittedly, P.W. 12 is running his tea shop without a licence. The likelihood of his being under the obligation of P.W. 34 Kanavi cannot be altogether ruled out and P.W. 34 has been a strong supporter of the Petitioner in his election.

666. P.W. 26 has given evidence that he did not know that he was giving evidence in a case filed by the Petitioner to set aside the election of the Respondent No. 1, though he was always supporting the Respondent No. 1 and that there had been no talk at any time between him and the Petitioner about the incidents about which he had given evidence and that he had not talked about it with anybody else till now. If what he says is true, then, it would be very strange how he happened to be a witness cited and examined by the Petitioner. His name is not mentioned either in the election petition or in the Petitioner's evidence. P.W. 26 appears to be made to order witness and his testimony is to be considered in view of the evidence given by him that he was always supporting the Respondent No. 1, while his evidence is contrary to his alleged support. I am not satisfied with his evidence.

667. P.W. 27 Veerabhadrappa and P.W. 26 are both from Narasapur village and P.W. 27 denies even the fact that is admitted by P.W. 26 that there were two parties in that village, one supporting the Petitioner and the other party supporting the Respondent No. 1 and P.W. 27 says that there were no two parties in their village. He pretends ignorance and has given evidence that he does not know on whose behalf he has given evidence. His name is also not mentioned in the petition nor spoken to by the Petitioner in his evidence. His evidence appears to be untrustworthy and unreliable. Hence, I reject his evidence on this point as he appears to be a chance witness.

668. P. W. 61 Giddappa Abbigeri is spoken to by the Petitioner as the informant on this point (cart-hire). But this witness does not say a word about the hiring of the cart in his evidence.

669. The Petitioner and his witnesses have failed to give convincing evidence on this point. For the reasons stated above, I hereby hold

that the Petitioner has failed to prove the allegations contained in para 5 (e) (ii) of the petition.

670. *The next allegation is contained in para* 5 (e) (*iii*) *of the petition.*

671. The allegation contained in para 5 (e) (iii) of the petition is that Sri Iswarappa Belappa Bileyali of Hirekoppa, the canvassing agent of the Respondent, hired six carts in which voters were conveyed from Hirekoppa to Nagasamudra polling station and back for voting.

672. The statement of the Respondent No. 1 is contained in para 38 of his written statement Ex. 36 already mentioned above.

673. The above allegation is spoken to by the Petitioner, P. W. 25, P. W. 66 and also by the Respondent No. 1 and R. W. 7.

674. The Petitioner has given evidence that Iswarappa Bileyali of Hirekoppa was the canvassing agent of the Respondent No. 1 who had hired six carts to take the voters from Hirekoppa to Nagasamudra and back and accordingly, the voters were conveyed in those carts for the Respondent No. 1. He has also given evidence that he had seen Iswarappa personally canvassing for the Respondent and that Iswarappa Bileyali is a follower of the Respondent No. 1 and he does not know whether the brother of Iswarappa Bileyali is a debtor of the Sale Society, Gadag and he (the Petitioner) does not know who gave the information as to who have been brought in the said six carts.

675. P. W. 25 Iswarappa Bileyali has given evidence that there was a meeting in the village of Hirekoppa two or three days prior to the polling day, and after the meeting, when he came to his house, he was told to arrange for hired carts to the voters on the polling day. He has given evidence that he had hired six carts on a hire charge of Rs. 4 per cart and that the carts of Mahadevappa Bileyali, Adiveppa Giddamallannavar, Basappa Hebballi, Basappa Hadagali, Sanabasappa Hadagali and that of his were hired. He has further deposed that the Respondent No. 1 had paid Rs. 30 to him for cart hire. At about 8 or 8-30 A.M., they (meaning the cartsmen) took the voters to the polling station and that they made two trips and that after paying the cart hire, Rs.6 remained with him and he went to refund the same to the Respondent No. 1, but the Respondent No. 1 asked him to keep the same for tea. He has also given evidence that he gave the Respondent No. 1 a yadi of the persons whose carts had been hired.

676. R. W. 66 Adiveppa Giddamallanavar of Hirekoppa has given evidence that on the day prior to the polling day, Iswarappa Bileyali (P. W. 25) told him that carts were to be hired and whether his too would be available as six carts were required on a hire charge of Rs 4 per cart to which he agreed and that on the polling day, he had gone in his cart with 10 to 11 persons in that cart.

677. The Respondent No. 1 has given evidence that he had not engaged any cart on hire or made any arrangement for bringing the voters from Hirekoppa to Nagasamudra. He has also given evidence that P. W. 25 Iswarappa Bileyali had supported the Petitioner in the election and that he was not his canvassing agent.

678. R. W. 7 Mallappa Asuti of Hirekoppa has given evidence that P. W. 25 and P. W. 66 supported the Petitioner during the election and Adiveppa's grandson has been taken as a clerk in the A. P. M. C. and who is still working there. He has also given evidence that it is false that carts had been arranged to take the voters to Nagasamudra and that the carts had not been arranged by the Respondent No. 1 to take the voters.

679. The Petitioner has no personal knowledge of this allegation in view of his verification to the petition. and his evidence that he had personally seen P. W. 25 canvassing for the Respondent No. 1 is therefore false having been falsified by his own verification in the petition. P. W. 25 Iswarappa Bileyali is a convict as per the judgment in Ex. 424 and P. W. 25 appears to be the Petitioner's man, though P. W. 25 wants to show that he is a Respondent No. 1's man. The cross-examination of P.W. 25 and P. W. 26 discloses that these two witnesses are Petitioner's men. P. W. 66 Adiveppa has given evidence that he had not taken any part in the election, and yet, his evidence discloses that he did take part in the election. The names of these witnesses except P. W. 25 is not mentioned in the petition and the names of the voters alleged to have been taken are also not mentioned in the petition. The evidence of P. W. 66 is not direct ; his evidence appears to be second-hand in nature, because he has deposed that P. W. 25 told him that carts were to be hired and whether his would be available, and carts were required to take the voters to Nagasamudra and back, and P. W. 25 said that Rs. 4 would be paid as hire for a cart, etc. In other words, P. W. 66 himself has no personal knowledge about the hiring.

680. Varaputrappa was the polling agent of the Respondent No. 1, but P. W. 25 was neither the polling agent nor canvassing agent of the Respondent No. 1. Ex. 266, the list of polling agents, shows that in the polling station No. 3, Nagasamudra, one V. C. Bileyali was the polling agent of the Respondent No. 1 and Veerabhadrappa Basappa Bileyali was the polling agent of the Petitioner. There were two parties in that village as per the evidence of P. W. 25, but P. W. 66 does not admit that fact.

681. It has been contended by the learned advocate for the Petitioner that it is not suggested to P. W. 25 and P. W. 66 when they were in the witness box that they were partisan witnesses and that they were working for the Petitioner during the election and that instead, the Respondent No. 1 has examined R. W. 7 to show that P. W. 25 and P. W. 66

worked for the Petitioner, and obviously Respondent No. 1 should have tutored R. W. 7 and he relied upon the decision reported in A. I. R. 1940 Patna 683 and urged that when the witnesses were not cross-examined on those points, their evidence must be accepted.

682. I do accept the contention of the learned advocate for the Petitioner on principle that there is no cross-examination on the point discussed above from the evidence of P.W. 25 and P.W. 66 and therefore, according to the principle laid down in that Patna decision, the assumption is that when the witnesses were not tested, their evidence is to be accepted, unless of course, there are any inherent improbabilities. In the present case, I admit there is no cross-examination on the material points spoken to by these witnesses in the examination-in-chief. But, in spite of this omission to cross-examine on these points, I find that the evidence of these witnesses are not at all creditworthy, because I am not at all convinced with the evidence of these two witnesses. The correct method of appreciating and assessing the evidence of a witness is by scrutinising the evidence on its merit. I do not think these witnesses are telling the truth. Justice cannot be divorced from truth and the first duty of a person who is entrusted with a task of administering justice is to do his best to reach the truth and not to rely entirely upon the technicalities.

683. I am not at all convinced with the evidence adduced by the Petitioner and his witnesses on this point. For the reasons stated above, I hereby hold that the Petitioner has failed to bring home the guilt of the Petitioner mentioned in para 5 (*e*) (*iii*) of the petition.

684. *The next and the last allegation with reference to Issue No.* 5 *is the allegation mentioned in para* 5 (*e*) (*iv*) *of the petition.*

685. The allegation mentioned in para 5 (*e*) (*iv*) of the petition is that Sri Budappa Ramappa Tirlapur, the canvassing agent of the Respondent No. 1, hired 10 bullock carts and conveyed Binkadakatti voters to Hulakoti and back to vote for Respondent No. 1, details whereof are given in paragraph 5 (*a*) (*ix*) of the petition.

686. The Respondent No. 1 has stated in para 38 of his written statement Ex. 36 that the allegations mentioned in para 5 (*e*) (*iv*) of the petition are not true and he had not taken any voters to or from the Polling Stations nor had he authorised anybody to take voters to or from the polling stations and that the allegations made in the said para are denied and further this Respondent cannot be held responsible for any unauthorised acts by other persons. His written statement with reference to the allegation made in para 5 (*a*) (*ix*) of the petition is at para 22 of the written statement which may also be seen in this connection.

. . o a ve alle tion is s ken to the Petitioner, P. . 2, P.W. 11, P.W. 33, P.W. 37, P.W. 56, P.W. 63, and the Respondent No. 1 and R.W. 2 and R.W. 3.

688. The Petitioner has given evidence that Budappa Ramappa Tirlapur, the canvassing agent of the Respondent No. 1, took all the voters from Binkadakatti in ten carts which were hired and that P.W. 56 Mulimani told him about Budappa Ramappa Tirlapur having hired ten carts and that information was given to him about 8 or 10 days after the election at Gadag.

689. P W. 2 Udachappa Nimbanaik of Hulakoti has given evidence that on the polling day, about 8 or 10 carts from Binkadakatti came to Hulakoti and there were voters in those carts.

690. P.W. 11 Budappa Ramappa Tirlapur of Binkadakatti has given evidence that the members of his family are all congress people and that he had canvassed for the Respondent No. 1 during the election and that Basavareddy Budappa Tirlapur was the polling agent of the Respondent No. 1 at Hulakoti. He has also given evidence that when the Respondent came to Binkadakatti 8 days prior to the election, he (P.W. 11) wanted Rs. 100 for carts and that Respondent No. 1 had given him a sum of Rs. 100 for carts and to give to some voters and that Rs. 5 was given to both cart hire and for voting being given by the family. He has given further evidence that he had hired 10 carts at Rs. 5 per cart, and he had incurred a further sum of Rs. 20 for wall boards and that on the polling day he took the ten cartsmen and the voters to Hulakoti.

691. P.W. 33 Rangappa Ramappanavar of Binkadakatti, P.W. 37 Kenchanagouda of Binkadakatti are the two witnesses along with P.W. 63 Ranganagouda Timmanagouda of Binkadakatti who speak about the hiring of the carts by P.W. 11, and P.W. 56 Martandappa Mulimani speaks about having seen the cartsmen and the voters in the bullock carts on the polling day.

692. Respondent No. 1 has given evidence that he had not made any arrangements to bring the voters by conveyance from Binkadakatti to Hulakoti and that he had not done any writing in Binkadakatti on the walls. He has also given evidence that P.W. 2, P.W. 11, P.W. 33, P.W. 37, P.W. 56 and P.W. 63 have deposed falsely and that leaving aside P.W. 56 Martandappa Mulimani who is a friend of the Petitioner, the other witnesses examined on this point are all the underlings of the Petitioner.

693. R.W. 2 Basavaraddy Tirlapur of Binkadakatti has given evidence that Tirlapur family members were staunch congress men except one family, namely that of P.W. 11 Budappa Ramappa Tirlapur. He has also given evidence that P.W. 56 Martandappa Mulimani is thick with the Petitioner and that with respect to the T.D.B. Elections of 1960, Mar-

tandappa Mulimani and Neelappa Karur had applied for congress tickets, but they did not get a congress ticket and hence the Petitioner, Martandappa Mulimani and Neelappa Karur above named had worked against the congress nominee, R.W. 5 Govindappa Hiregoudar and defeated him (R.W. 5) and that Sri Venkaraddi of Hulakoti, Shankaragouda of Malasamundra, Hanamappa Dasar of Binkadakatti were the candidates opposing the congress candidates in that during the T.D.B. elections. He has also given evidence that the said Hanamappa Dasar had been proposed by P.W. 11 Budappa Ramappa Tirlapur in that election and that P.W. 56 Martandappa is the Chairman of the Village Panchayat and P.W. 11 is its member and that P.W. 11, P.W. 33, P.W. 37, P.W. 63 act according to what P.W. 56 Martandappa tells them as they belong to his group.

694. The evidence of R.W. 2 is more or less corroborated by the evidence of R.W. 3 Devaraddappa Tirlapur of Binkadakatti.

695. There are circumstances in this case to show that the witnesses examined on this point by the Petitioner are all partisan witnesses and highly interested in the Petitioner.

696. If it is shown that P.W. 11 Budappa Tirlapur is not the Respondent No. 1's man, but he is a supporter of the Petitioner and a partisan of P.W. 56 Martandappa and Neelappa Karur, it will be easy to see that P.W. 11 could not have been asked by the Respondent No. 1 to canvass for him, to secure carts for him and to have his advertisements painted through him.

697. The fact that P.W. 11 has been named in the petition by the Petitioner and the fact that P.W. 11 has sworn in support of the Petitioner on several points is a circumstance indicating that P.W. 11 is the Petitioner's man and not the Respondent's supporter or canvassing agent. Assuming that P.W. 11 was and is a congress man, it does not follow that he should not oppose the congress. The Petitioner himself was a staunch congressman from about the year 1943 and there are evidence on record to show that even the Petitioner and other congressmen like Martandappa Mulimani, Neelappa Karur and others including Ramappa Tirlapur had worked against the congress candidate during the T.D.B. Election of 1960. If P.W. 11 had really worked for the congress and the Respondent No. 1 during the election, he must have known that the Petitioner had resigned from the congress which fact is not only admitted by the Petitioner, but this fact of having resigned from the congress also appeared in the Kannada newspapers. But, P.W. 11 has given evidence that he does not know whether the Petitioner had resigned from the congress and that he does not know from what party the Petitioner had stood as a candidate. R.W.19 Fakkirappa Mulgund who is a congress member for the past 15 to 20 years and who is a Secretary of the Gadag East Mandal Committee since 1960 and a nominated member of the T.C.C. since 1960 has produced four documents with Ex. 679. These four documents are all public documents

and they are permitted to be exhibited. The summons Sl. No. 1 with Ex. 679 is marked as Ex. 679-A ; the copy of the election petition Sl. No. 2 with Ex. 679 is marked as Ex. 679-B ; the nomination paper Sl. No. 3 with Ex. 679 is marked as Ex. 679-C ; and the result of the T.D.B. election at Sl. No. 4 with Ex. 679 is marked as Ex. 679-D. The nomination paper of the T.D.B. election at Ex. 679-C shows that P.W. 11 proposed the name of Hanamappa Dasar for the T.D.B. election and the evidence of R.W. 1, R.W. 2, R.W. 3, R.W. 5 and R.W. 19 will show that P.W. 11 is not with other Tirlapur families in supporting the congress and that P.W. 11 is a supporter of the Petitioner.

698. As already mentioned above, the fact that P.W. 11 has been named in the election petition by the Petitioner and the fact that P.W. 11 has been made to swear on many points in support of the Petitioner are strong circumstances showing that P.W. 11 is a Petitioner's man and not the Respondent No. 1's man, as he pretends himself to be. The evidence of P.W. 11 stands condemned because his position, though not accomplice as such, is similar to that of an accomplice. He is a witness who comes upon the witness stand to testify that he had, during the election, acted corruptly and he is by his very statement, a lier and therefore, untrustworthy as a witness. His statement has to be considered with very great care and caution. He does not appear to be a man of truth, it may be, he is a man of position and status. But, his evidence is to be tested not from what he has, but from what he is. The documents Ex. 679-A ; Ex. 679-B, Ex. 679-C and Ex. 679-D will show that he is not only on enmical terms with R.W. 5 Hiregoudar, but also he has been on enmical terms against the congress party. He being a congress man, he had proposed Hanamappa Dasar, a candidate who stood against the congress in the T.D.B. elections. P.W. 11 is a henchman of the Petitioner who in turn is a friend of P.W. 56 Martandappa Mulimani and Neelappa Karur. P.W. 11 admits that he acts according to the wishes of Neelappa Karur. Circumstances in the evidence show that P.W. 11 poses himself to be the Respondent No. 1's man, but the evidence on record show that he is virtually the Petitioner's man. The other witnesses examined on this point by the Petitioner are all shown to be interested in the Petitioner and they are partisan witnesses and the Petitioner himself has no personal knowledge of this allegation, in view of his verification to the petition.

699. A corrupt practice under Section 123 (5) of the R. P. Act is committed only when a vehicle is hired or procured by the candidate or his election agent or by any other person with his consent. A candidate cannot, therefore, be found guilty of such practice where the evidence shows that voters were carried in a motor vehicle belonging to a partner or relative of the candidate (20 E.L.R. 37). In the instant case, there is no evidence to show that P.W. 11 was a canvassing agent of the Respondent No. 1 or that he acted with the consent of the Respondent No. 1. No consent has been alleged in the petition, and much less suggested or proved in his evidence or in the evidence of any other witnesses. All the witnesses

examined on this point by the Petitioner are all highly interested and partisan witnesses and their evidence are absolutely untrustworthy and cannot be acted upon.

700. For the reasons stated above, I hold that the Petitioner has failed to prove the allegations contained in para 5 (*e*) (*iv*) of the petition also and in the result I hold that the Petitioner has failed to prove any of the allegations mentioned in Issue No. 5, and I hold that the Petitioner has not proved Issue No. 5 also.

Issue No. 6.

701. *Does the Petitioner prove the corrupt practice under Section* 123 (6) *of the R. P. Act as alleged in paragraphs* 4 (*f*) *and* 5 (*f*), (*i*) *of the petition* ?

702. The allegation in para 5 (f) (i) of the petition is that the Respondent No. 1 had exceeded the limits of Rs. 6,000 by several times and suppressed the items of expenditure purposely and grossly minimising by the squeeze them some how within the permissible limits. He has also failed to maintain accounts as required by the law. The return of election expenses filed by him is a mere manipulation. He has suppressed many items of expenditure including printing, painting, propoganda, cardboards, wallposters, telephone and telegram charges, electrical expenses, vehicle hire charges, office rents, tiffin charges, etc. The petitioner has given a long list of the amounts alleged to have been spent by the Respondent No. 1 during his election and that list has been given in detail in the tabular form at page 23 of the petition and that tabular form consists of 22 items of election expenses.

703. The Respondent No. 1 has stated in para 39 of his written statement Ex. 36 that the allegations in para 5 (f) are not true and that this Respondent has not exceeded the limits of Rs. 6,000. He has given correct account, having maintained the accounts as required by law, and it is false that he has suppressed any amount of expenditure and that the return of expenses filed by him is a mere manipulation and the table given by the Petitioner at the end of the said para is entirely false, and item No. 20 has not been shown as expenses as it is a refundable amount and which has already been withdrawn by this Respondent.

704. In so far as the items of alleged election expenses mentioned in Sl. Nos. (items) 1 to 15 of the tabular form at page 23 of the election petition are concerned, for the reasons I have already stated and reasoned while considering the allegations mentioned in the various paras of the petition referred to in the tabular form, I have held that the Petitioner has failed to prove the allegations mentioned in those paras and that those allegations have not been proved by thePetitioner and consequently, in view of the above findings given under different paras mentioned in the tabular form, I hereby hold that the alleged election expenses mentioned

in item Nos. 1 to 15 of the tabular form at page 23 of the petition are not proved by the Petitioner. As there is no evidence of a reliable naturrt regarding the charges for publicity of newspapers (Sl. No. 14 of the tabulae form at page 23 of the petition), *I* also disallow the item of expenses mentioned in item No. 14 of the tabular form as not proved by the Petitioner. Since I have disallowed the items 1 to 15 of the tabular form a page 23 of the petition, I will now proceed to consider the remaining items of the alleged election expenses of the Respondent No. 1, from item Nos. 16 of that tabular form.

705. *Item No.* 16 *of that tabular form .—Loudspeaker hire charges for the period* 26-1-1962 *to* 21-2-1962.

706. The relevant voucher is Ex. 270 page (19) (Voucher No. 17), dated 25-2-1962. This is spoken to by the Petitioner, P.W. 78 Veerappa Badiger and also by the Respondent No. 1.

707. The Petitioner has given evidence that Sl. No. 2 with Ex. 151 of the Indian Radio House does not appear in Ex. 270, the return of election expenses of the Respondent No. 1 and that only the item of Rs. 35 for amplifier appearing at the kird book page 17 in the name of the Respondent No. 1, dated 3-3-1962 has been shown in the return of election expenses, Ex. 270. He has also given evidence that two items of Rs. 31 and Rs. 35 in the kird book have been entered in the khata at page 6 on the corresponding dates and that in the khata, an amount of Rs. 47 is shown which includes the amount of Rs. 35 *plus* Rs. 12 relating to another person, and these accounts have been maintained according to commercial custom. He has also given evidence that Voucher No. 17 produced with the return of election expenses had been produced by the Respondent No. 1 and that the Petitioner does not know whether Kabadisa is the proprietor of the Indian Radio House and that he does not know whether V. V. Endigeri is one of the employees of the Indian Radio House and that he had cited Messrs. Indian Radio House to bring with him the credit account of the Respondent No. 1 regarding the loudspeaker and he had not thought over as to who exactly was to bring the documents mentioned therein.

708. It has been contended by Sri B. S. Patil, the learned advocate for the Petitioner that in Ex. 529, an extract from the kird of the Indian Radio House, Gadag, dated 10-2-1962, there is an entry of Rs. 31 in the name of the Respondent No. 1 regarding the use of amplifier, and that there is a credit entry of Rs. 31 against the date 10-2-1962 and that against the date 3-3-1962, there is a credit entry of Rs. 35. He has urged that only one item of Rs. 35 has been shown by the Respondent No. 1 in his return of election expenses, Ex. 270, and that the item of Rs. 31 has been suppressed by the Respondent No. 1.

709. Ex. 529, the kird book is not at all proved by the Petitioner as no witness has been examined by the Petitioner to prove that entry. It is

the Petitioner who refers to the items of entries of that kird in his evidence and the Petitioner does not know anything about the payment or of hiring of the Respondent No. 1 with the Indian Radio House. He relies upon the entries in the kird. P.W. 78, V. V. Endigeri has been examined on this point by the Petitioner. Admittedly, the entry is not in the handwriting of P.W. 78 and no receipt is called for. No doubt, there is an entry of Rs. 31 in the name of the Respondent No. 1 in the account book, but there is nothing to show the Respondent No. 1's connection with the entry or payment of Rs. 31. The owner of P.W. 78 is one Venkusa who was the polling agent of the Petitioner in the Polling Station (Sl. No. 23) at Gadag as could be seen from Ex. 266, the list of polling agents, and this Venkusa has kept himself out, financially broken.

710. Respondent No. 1 has sworn that Ex. 270 (page 19) is a receipt from the Indian Radio house for Rs. 35 in respect of the items mentioned therein and that he had not used any more amplifier than those mentioned therein and that he had made the payments of Rs. 35 on 3-3-1962 and he had not paid anything more than the amount of Rs. 35 which he has shown in the return of election expenses, showing the date incurring the expenditure and the date of payment and that those dates tally with the dates in Ex. 270, page (19) and what P.W. 78 has deposed about the amount of Rs. 31 having been paid and the receipt taken on 10-2-1962 is false, and that as the proprietor of this witness P.W. 78 was the polling agent of the Petitioner, P.W. 78 is deposing so at the instance of the Petitioner.

711. The voucher Ex. 270, page (19) is signed by the Proprietor, Sri Kabadi on a receipt stamp and the payment shown as cash payment by P.W. 78. The entry of Rs. 31 has not been proved by the Petitioner, because P.W. 78 is the only witness examined on this point who had not written the kird and the khata book produced before the tribunal. P.W. 78 appears to be an interested witness, as his boss was the polling agent of the Petitioner and therefore, P.W. 78 appears to be under the influence of his boss and the Petitioner. I cannot accept the contention of the Petitioner that Rs. 31 has been suppressed. Therefore, I hold that item No. 16 of the tabular form at page 23 of the petition has not been proved by the Petitioner.

712. *Item No.* 17 *of the tabular form at page* 23 *of the petition* :— *Telephone and Telegram charges.*

713. The above item is spoken to by the Petitioner and the Respondent No. 1.

714. The Petitioner has given evidence that Telephone charges are not shown by the Respondent No. 1 in the return of election expenses, Ex. 270, for the period from 3-1-1962 to 28-2-1962 and that the Respondent No. 1 had actually incurred expenses for the same in connection with the propoganda work and that all the calls in Ex. 275 and Ex. 276 except

those in respect of Nargund factory were made for election purposes, because firstly, the Respondent No. 1 does not do any other business and secondly, the call numbers relate to election agents and propaganda machineries.

715. The Respondent No. 1 has given evidence that he had not made any trunk-calls during the election period for election purposes and his evidence on this point is also seen in paras 119 to 124 of his evidence.

716. It has been contended by the learned advocate for the Petitioner that there are nine varieties of Telephone calls in all as detailed in Exs. 275 and 276 which are the Telephone bills of the Respondent No. 1, ranging from December 1961 to January 1962 in Ex. 275 and for the months of February and March 1962 in Ex. 276. He invited my attention to rule 86 of the Conduct of Election Rules and submitted that a sum of Rs. 180-30 nP. is the Telephone expenses of the Respondent No. 1 according to the Petitioner and that Ex. 293, the account kept by the Respondent No. 1 in relation to election expenses and the return of election expenses Ex. 270, are conspicuous by the total absence of the Telephone expenses. He has also urged that when the calls are admitted by the Respondent No. 1, the burden has shifted and it is the duty of the Respondent No. 1 to show that these calls were not made in connection with the election and that the Respondent No. 1 has failed to discaharge his duty and he has failed to examine his nephew, his clerks to the newspaper editors or the correspondents to show that the phone calls were not made in connection with the election. He contended further that the Respondent No. 1 has failed to discharge his burden and therefore an adverse inference is to be drawn under Section 106 of the Indian Evidence Act as the Telephone calls are within the special knowledge of the Respondent No. 1 and that the Respondent No. 1 has no defence to offer and he (R.W. No. 1) has virtually accepted the version of the Petitioner and the stand taken by the Respondent No. 1 with reference to the Telephone calls is similar to an admission.

717. In so far as the telephone calls are concerned, the Responde No 1 has positively stated in his evidence that the telephone calls were not made in connection with the election (refer his evidence in paras 53, 119, 123, 124, 125 and 127). That being the case, I am unable to accept the contention made on behalf of the Petitioner that the burden of the Petitioner is shifted. In my opinion, the Petitioner should have proved that the calls were made in connection with the election of the Respondent No. 1. The Petitioner had taken from the evidence of the Respondent No. 1 the names of Karamarkar, the Deputy Commissioner and other persons and having taken these names from the evidence of the Respondent No. 1, the Petitioner should have examined those persons to show that the calls were made by the Respondent No. 1 or somebody on his behalf with his consent in connection with the election. That has not been done by the Petitioner. The list of phone calls were before the

Tribunal long long ago and the Petitioner should have taken steps to prove these calls, particularly when the Respondent No. 1 has taken the stand that those calls were not made in connection with the election. In so far as the Respondent No. 1 is concerned, in connection with the telephone calls, there is no admission except a total denial and there is no evidence placed by the Petitioner or his witnesses that the calls were made in connection with the election and no witness has beene xamined by the Petitioner on this point except his own testimony which is highly interested.

718. For the reasons stated above, I hold that the Petitioner has failed to prove that the phone calls were made by the Respondent No. 1 or somebody else on his behalf with his consent, in connection with the election and therefore, the item of alleged expenses need not be included in the return of election expenses.

719. *Item No.* 18 *of the tabular form at page* 23 *of the petition Contribution to the D. C. C. and T. C. C. election prop ganda fund.*—

720. On a perusal of the tabular form at page 23 in the election expens, it can be seen that no amount of the contribution is mentioned and no date has been mentioned in the petition. The Petitioner has not given evidence on this point and no witness has been examined by him. Therefore, I hold that this item of expense has been proved by the Petitioner.

721. *Item No.* 19 *of the tabular form at page* 23 *of the petition. Hire of petromax from Dongarisaheb Gousasaheb Maniyar dated* 20*th February* 1962 *and the amount shown Rs.* 45.

722. The Petitioner has examined P. W. 41 Dongarisaheb of Betgeri to prove the above item of expenses. It has been contended on behalf of the Petitioner that the Respondent No. 1 had hired 60 gas-lights at the rate of Rs. 3 per gaslight total amounting to Rs. 180 and that item of Rs. 180 has not been shown by the Respondent No. 1 either in his election account or in his return of election expenses and therefore prayed that this amount of Rs. 180 has to be included in the return of election expenses.

723. At page 23 of the tabular form in the petition, item No. 20, refers to the hire of petromax from Dongarisaheb Gousasab Maniyar and the date shown is 20th February 1962 and the amount shown against that item is Rs. 45 in the petition, P. W. 41 Dongarisab who has been examined by the Petitioner about the gaslights has given evidence that 8 or 10 days before the polling day, there was Sri Nijalingappa's procession at Gadag and that he had supplied 60 gaslights for Sri Nijalingappa's procession at the rate of Rs. 3 per gaslight and he had received Rs. 180. From his evidence, it could be seen that the gaslights were alleged to have been arranged by the Respondent No. 1 and others.

724. There is enough materials on record to show that the procession of Sri Nijalingappa took place on 12th February 1962 and not on 20th February 1962. But in the tabular form at page 23 of the petition, the date shown against the petromax lights of Dongarisab is 20th February 1962 and the amount shown against this item is Rs. 45 and the evidence of P. W. 41 has absolutely no connection whatsoever with the item shown at page 23 of the petition, and P. W. 41 does not at all swear to any petromax light having been supplied on 20th February 1962 and there is no other evidence on this point adduced by the Petitioner or his witnesses.

725. For the reasons stated above, I hold that the Petitioner has failed to prove this item of election expense as alleged in the petition.

726. *Item No.* 20 *of the tabular form at page* 23 *of the petition.— Regarding the deposit made at the time of nomination* (*Rs.* 250).

727. The Respondent No. 1 has given evidence that he had produced a sum of Rs. 250 by way of deposit along with his nomination paper and that he has shown it in his election accounts at Ex. 293 at page 3 in the item of 17th January 1962 and that he has not included this item in the return of election expenses as he thought that only the items of expenditure should be shown. He has also given evidence that Ex. 539 to 541 relate to this item of Rs. 250 and it was refunded to him on 16th April 1962.

728. Under Section 34 of the R. P. Act, a candidate shall not be deemed to be duly nominated for election from a constituency unless he deposits or causes to be deposited in the case of an election from an Assembly or Council, a sum of Rs. 250 and under Section 158 of the R.P. Act that deposit made under section 34 of the R. P. Act shall be returned to the person making the deposit or his legal representative or to be forfeited to the appropriation authority in accordance with the provisions of that section and that except in cases mentioned in that section, the deposit shall be returned as soon as practicable after the result of the election is declared.

729. The deposit amount of Rs. 250 made by the Respondent No. 1 under section 34 of the R. P. Act is thus, a refundable amount and according to the evidence of the Respondent No. 1, it was refunded to him on 16th April 1962 and therefore, it cannot be an amount incurred or authorised within the meaning of Section 77 or section 123(6) of the R. P. Act. Therefore, I hold that this item of deposit amount of Rs. 250 need not be entered in the return of election expenses.

730. *Items No.* 21 *and* 22 *of the tabular form at page* 23 *of the petition. Regarding Viswavani and Samyuktakarnatak advertisements.*

731. Item No. 21 and 22 of the tabular form at page 23 of the election petition refer to advertisements in the Viswavani and in the

Samyuktakarnatak. No amounts, dates, or places have been shown in that tabular form as against these items and therefore, the provisions of Section 83 of the R. P. Act have not been complied with by the Petitioner.

732. The above items are spoken to only by the Petitioner and the Respondent No. 1.

733. The Petitioner has given evidence that in the issue of Viswavani dated 12th February 1962 (Ex. 213) and dated 13th February 1962 (Ex. 212), advertisements for voting appear and they had appeared in other issues also and that the expenses about these are not shown in the return of election expenses Ex. 270. He has also given evidence that similarly, the expenses for advertisements in Samyuktakarnarak (Ex. 211) dated 22nd February 1962 have not been shown in Ex. 270 and in the return of election expenses, the Respondent No. 1 has not shown either the charges of advertisements or the costs of block in the issue of Samyuktakarnatak dated 3rd February 1962 produced with Ex. 142 and that he learns that a sum of Rs. 4 were the expenses for that block. The Petitioner has also given evidence that the names of many others, besides the Respondent No. 1, appear in Ex. 213 and Ex. 212 in the issues of Viswavani and that all the candidates mentioned therein are congress candidates and similar is the case with the advertisement in Ex. 213.

734. The Respondent No. 1 has given evidence that he had not given any money to Viswavani to advertise for him and tha the had not paid any money to Samyuktakarnatak for advertising in his favour and that he had not paid for the expenses of the block of the photo appearing in the issue of Samyuktakarnatak dated 3rd February 1962 produced with Ex. 142 and that Ex. 142 is the statement given on behalf of Samyuktakarnatak.

735. The petition is silent about the dates and the expenses of these items, mentioned in Sl. Nos. 21 and 22 of the tabular form of the petition at page 23. The petitioner has no personal knowledge of these items of expenses, in view of his verification to the petition and no witnesses have been examined by him on this point. The Respondent No. 1 has sworn that he had not incurred these items of expenses and I believe his statement on this point.

736. Therefore, I hold that the Petitioner has failed to prove the items of expenses at Sl. Nos. 21 and 22 of the tabular form mentioned in the petition at page 23.

737. There are other items of expenses added during the evidence of the Petitioner and the Respondent No. 1. Those items were not specifically

eged in the particulars of the ite menti d in ta ar f at page 23 of the petition. They are as follows :—

738. The Petitioner has given evidence that the Respondent No. 1 has suppressed many items of expenditure regarding printing, propaganda including petrol, card-boards, wall-posters, telephone and telegram charges, electrical expenses, vehicle hire charges, office rents, tiffin charges etc., and that the return of election expenses do not tally with the account books of the Respondent No. 1. In the above evidence, the Petitioner has deposed that propaganda includes petrol. This is an improvement as the item of petrol has not been alleged or mentioned in the tabular form mentioned above.

739. *Regarding Voucher No.* 15 (*Ex.* 270 *page* 17) :—The Petitioner has given evidence that the person mentioned in the voucher No. 15 dated 22-2-1962, namely, Balappa Holiyappa Biragondanavar is different from the one who has signed the receipt or letter Ex. 141, namely Balappa Holiyappa Biragonnavar and that the signatures are also in different hands. That the letter 'pa' in the two signatures is different and that in Ex. 126, the address is given as Biragondanavar. He has also given evidence that he cannot say whether Balappa Holiyappa Biragondanavar and Balappa Holiyappa Biragonnavar are two different persons or one person and he cannot say whether the same person signs as Biragonnavar and Biragondanavar, as he had not seen him at all and that in both (namely, Voucher No. 15 and in Ex. 141), the amount of Rs. 1,050 is shown to have been received.

740. The Respondent No. 1 has given evidence that Balappa Holiyappa Biragonnavar who had given the voucher No. 15 had come to Court, as the Petitioner had called him and that as against the voucher No. 15, he had shown in respect of the bill of Balappa Holiyappa Biragonnavar in Ex. 270 page (1-A) dated 3-1-1962 to 22-2-1962 as the dates of incurring expenditure and on 22-2-1962 as the date of payment. He has also given evidence that the name that the Respondent No. 1 had written there is Biragondavar and it is mentioned as Biragondanavar in Ex. 270 page (17) and that in Ex. 141, it was signed as Biragonnavar and that he (Respondent No. 1) had seen him who was a cleaner of his hired car.

741. It has been contended by the learned advocate for the Petitioner that the Respondent No. 1 has given evidence that the person named in voucher No. 15 is Balappa Holiyappa Biragonnavar, while the voucher No. 15 mentions the name of Balappa Holiyappa Biragondanavar and therefore, according to the Petitioner, Biragondanavar is a fictitious person. He has also urged that the voucher No. 15 is hire charge of M.Y.X. 2412 amounting to Rs. 1,050 and that the period mentioned in that voucher is 42 days at Rs. 25 per day and in the Respondent No. 1's return of election expenses, the period mentioned is 42 days, but the number of days according to the Petitioner is 51 days and not 42 days and therefore, the

Respondent No. 1 had suppressed 9 days of hire charges of that vehicle amounting to Rs. 225 at the rate of Rs. 25 per day for these nine days, and that some fictitious persons who were a sort of made to order persons came and presented themselves before the tribunal and filed Ex. 140 and Ex. 141 and that he has brought the above facts to the notice of this tribunal to show that the Respondent No. 1 not only fabricated accounts of his election expenses but attempts were made by him (Respondent No. 1) to bring fictitious persons before this tribunal.

742. Ex. 82 is an application which shows that the address of this witness, Biragondanavar, was at Gadag. Ex. 108 is the interrogatories by the Petitioner to the Respondent No. 1 about the above witness and Ex. 126 is the reply of the Respondent No. 1 to the said interrogatories furnishing the address of that witness. The owner Rahimansab of the vehicle MYX 2412 and the cleaner were both summoned by the Petitioner as per the application Ex. 130 Sl. Nos. 1 and 2 and accordingly, these two persons appeared and put in the applications Ex. 140 and 141. In Ex. 140, it is stated that the registration of the vehicle MYX 2412 stood in the name of the owner's son named Mahammad Ali Saheb, and that the owner Rahiman Saheb was not in possession of any document and whether there was a letter of appointment of Balappa Biragondanavar was known to his son. Ex. 141 is a letter by Balappa Biragondanavar who has stated that he was not in possession of any document mentioned in the summons and that a sum of Rs. 1,050 paid by the Respondent No. 1 for hire charges of that vehicle was received by him and that he had no dakhala to evidence that transaction. Biragondanavar, though summoned by the Petitioner, was not examined by the Petitioner and therefore, in the absence of his examination, there is no basis to allege that Biragondanavar is a fictitious person. When Rahimansab and Biragondanavar were actually summoned to attend before this Tribunal, they could not possibly be fictitious persons.

743. I am unable to accept the contention of the learned advocate for the Petitioner on this point and I am not convinced that the Respondent No. 1 had suppressed the hire charges of nine days as alleged. Therefore, I hold that the Petitioner has failed to show the suppression of account of this item.

744. *Petrol accounts of Noorani and Manvi* :—It has been contended on behalf of the Petitioner that many other items of petrol have been suppressed by the Respondent No. 1 in his account book, Ex. 293, and in his return of election expenses, Ex. 270, particularly with reference to the petrol purchased from R.W. 29 Noorani and Sri Manvi.

745. On a perusal of the petition, absolutely no allegation has been made about the suppression of accounts regarding petrol. In the evidence of the Petitioner, an attempt has been made that the item of petrol expense is included in the propaganda and that attempt is clearly an

improvement in the version of the Petitioner. During the course of the evidence, attempts have been made to show that different items of expenses of petrol have been not shown in the accounts of the Respondent No. 1 and in his return of election expenses.

746. It is not urged in the petition and the evidence also discloses that the Petitioner had not come to know about the petrol till some receipts were shown to the Petitioner. (Refer paras 32, 33 and 34 of the evidence of the Petitioner). There are only three accounts and not four accounts with respect to the petrol account of Sri Noorani. The Rspondent No. 1's credit account, during the election period, was in the pending account, though the bills 8892 and 8569 are shown in the bills as due balance ; they have been taken in the pending account of pending khata and kird. It must have been after checking at the time when the accounts were written after checking.

747. Mere suspicion or suspicious circumstances or inference in the absence of positive proof cannot be proof of corrupt practices. The car numbers, when petrol was taken, etc., are all necessary particulars and they must be shown in the petition, (16 E. L. R. 327.) and the tribunal cannot go on a fishing expedition with the Petitioner.

748. As regards Manvis petrol, Manvi's books are produced with Ex. 91 and those books are not admitted by the Respondent No. 1. By Ex. 119, the Petitioner wanted the Respondent No. 1 to tell whether the Respondent No. 1 admits the Manvi's accounts or not and by Ex. 127 dated 15th November 1962, the Respondent No. 1 has said that he does not admit them.

749. Only the Petitioner speaks about these account books of Manvi and the Petitioner has no personal knowledge of those transanctions and therefore there is no proof of those documents according to law. The Respondent No. 1 has stated that he had never purchased petrol from Manvi and therefore, the entries referred to by the Petitioner are not shown to be genuine transactions. This apart, there is no other evidence. The disputed entries must be proved by the Petitioner. (A. I. R. 1926 Madras 955, A. I. R. 1933 Lahore 384, A. I. R. 1933 Madras 756, A. I. R. 1941 Patna 430).

750. As regards M. Y. X. 2357 (jeep), which is alleged to have been used by the Respondent No. 1, he has not shown the hire charges. He is not liable to show the hire charges as he has taken it from his friend. (Refer para 19 evidence of the Respondent No. 1 and also the Respondent No. 1 at para 140 page 122).

751. Therefore, I hold that there is no satisfactory evidence on behalf of the Petitioner about the suppression of petrol expenses.

About the Post-Cards.

752. It has been contended on behalf of the Petitioner that the Respondent No. 1 has also not shown the expenses incurred by him regarding the postcards. This item of expense has not been alleged in the petition as could be seen from the tabular form of the petition, and therefore, any amount of evidence will not be a proper substitute for want of proper pleadings. Therefore, I hold that there is no pleading on the matter and therefore I need not discuss about the postcards. (1964 Mysore Law Journal page 488).

M. P. C. C. Accounts and the amount given by R.W. 35 Umachagi.

753. It has been contended by the learned advocate for the Petitioner that in the kird book of R. W. 35 Umachagi, Ex. 838-A dated 12th February 1962, there is an entry of a sum of Rs. 1,001 shown as congress fund and that is the kird book of Hubli concern and according to M.P.C.C. accounts and M. P. C. C. Petty cash book, a sum of Rs. 1,000 was paid to the Respondent No. 1 by R. W. 35 as loan on 17th February 1962. The entry of Rs. 1,001 in the aforesaid kird book of R. W. 35 is dated 12th February 1962 which is shown as congress fund (not loan) and therefore, according to the Petitioner, two different amounts of Rs. 1,001 and Rs. 1,000 had been taken by the Respondent No. 1 from R. W. 35 Umachagi on two different dates and that the Respondent No. 1 has shown only Rs. 1000 in his accounts and in the return of election expenses and suppressed the sum of Rs. 1,001.

754. It has also been contended by the learned advocate for the Petitioner that three similar amounts of Rs. 2,000 were paid by the Respondent No. 1 during the election as follows :—(1) Rs. 2,000 by a cheque, as per the account of the Respondent No. 1 against the date 13th February 1962 ; (2) another sum of Rs. 2,000 as per the counterfoil of cheque dated 21st February 1962 and the endorsement made by Sri M. V. Ramarao and (3) a third sum of Rs. 2,000 as shown at page 405 of the ledger book of the M. P C. C. against the date 25th March 1962 and that according to the Petitioner, the sum of Rs. 2,000 paid to the Respondent No. 1 on 13th February 1962 has been shown by the Respondent No. 1 in his account and the other two similar amounts of Rs. 2,000 totalling Rs. 4,000 have been suppressed by the Respondent No. 1.

755. It has been contended by the learned advocate for the Respondent No. 1 that the Respondent No. 1 received only a sum of Rs. 1,000 cash and only one cheque of Rs. 2,000 paid between 1st August 1961 and 27th February 1962 , and another sum of Rs. 2,000 had been given to the Respondent No. 1 by the M. P. C. C. as loan on 25th March 1963 (not 25th March 1962) as could be seen from page 405 of the M. P. C. C. account book and that the amount of Rs. 2,000 paid to the Respondent No. 1

by the M. P. C. C. on 25th March 1963 has no connection with the election and the date of that loan is 25th March 1963 and not 25th March 1962 as alleged by the Petitioner. He invited my attention to the letter Ex. 613 from the State Bank of India at Gadag to the Election Tribunal sent as per summons Ex. 567.

756. From the M.P.C.C. accounts, the cheque books produced before this tribunal, the letter written by the State Bank of India, Gadag to this tribunal and the other evidence about the M.P.C.C. coupled with the evidence of P.W. 81 will clearly show that there was only one cheque of Rs. 2,000 given to the Respondent No. 1, during the election.

757. Sri Nijalingappa was admittedly present in Gadag on 12th February 1962. There is evidence to show that Sri Nijalingappa gave a cheque to the Respondent No. 1 for Rs. 2,000 bearing the date 11th February 1962 which was given to the Respondent No 1 on 12th February 1962 and the same was encashed by the Respondent No. 1 on 13th February 1962 and the cheque given by Sri Nijalingappa to the Respondent No. 1 has been entered on 21st February 1962 on the counterfoil of the cheque itself which has been filed before this tribunal. So, I hold that there was only one amount of Rs. 2,000 by a cheque given to the Respondent No. 1 through Sri Nijalingappa by a cheque which was encashed by the Respondent No. 1 on 13th February 1962 and which has been shown by the Respondent No. 1 in his account book relating to election expenses at Ex. 393.

758. As regards the amount of Rs. 1,000, the evidence of R.W. 35 Umachagi (refer para 7 and 19) shows that he had paid only one amount of Rs. 1,001 to Sri Nijalingappa and that, that amount includes Re. 1 given to charity. In the M.P.C.C. account, there is only one receipt, dated 17th February 1962 and only one entry, dated 17th February 1962 for Rs. 1,000 and there is no item in the account of the M.P.C.C.

759. From the available materials on record, I am convinced that the Respondent No. 1 was paid only two sets of amounts, namely Rs. 1,000 by cash through R.W. 35 and a sum of Rs. 2,000 by a cheque through Sri S. Nijalingappa, both having been paid to the Respondent No. 1 at Gadag during the time Sri Nijalingappa visited Gadag in connection with the procession, dated 12th February 1962 and that those two items of Rs. 1,000 and Rs. 2,000 have been shown in the accounts of the Respondent No. 1 and that the other item of Rs. 2,000 paid to the Respondent No. 1 on 25th March 1963 as per page 105 of the M.P.C.C. account book has no connection with the election.

760. For the reasons stated above, I hold that the contention of the learned advocate for the Petitioner cannot be accepted.

About loudspeakers in the election meetings.

761. It has been contended by the learned advocate for the Petitioner that in all there were 31 election meetings of the Respondent No. 1 during the election period and that the Respondent No. 1 had filed an application Ex. 229 to the Taluka Magistrate during the election for permission to use the loudspeakers from 3rd February 1962 to 20th February 1962 and hence, loudspeakers were used during that period and he contended further that it is the duty of the Respondent No. 1 to show that he had not used the loudspeakers during those meetings, in view of his application Ex. 229 mentioned above, otherwise the normal inference would be that the Respondent No. 1 did use them for the 31 election meetings. He contended that the Respondent No. 1 has not at all cared to explain that position.

762. There are materials on record to show that these election meetings were arranged by different political organisations of the congress during the election and therefore, the Respondent No. 1 is not liable for whatever monies have been spent by the political organisation, because the political party which has set up its candidate for an election is bound to incurr expenses to maintain its own prestige and the expenses so incurred by the political organisation in connection with an election propaganda need not be shown as expenses of the candidate, as the polical party setting up a particular candidate in an election is in the position of principal and the candidate is its representative or an agent in an election and therefore the candidate is not responsible for the expense of the political organisation. It has been held in 21 E.L.R. at page 1 that expenditure incurred by a party organisation for holding public meetings in the general campaign conducted by a party for the purpose of getting support for all the party candidate of a particular locality is not expenditure incurred by any of the particular candidates and need not be included in the return of election expenses.

763. The Respondent No. 1 has stated that he had arranged three meetings during the election for which he had paid hire charges of the loudspeaker and that he had shown the expenses so incurred in the return of election expenses. Except the expenses of those three meetings, the Respondent No. 1 is not liable to show the other expenses of loudspeakers incurred by the political organisation. In this connection, refer explanation to Section 125 of the Old R. P. Act as it stood before the amendment and also Section 66 of 1956 amending Act.

764. I am unable to accept the contention of the learned advocate for the Petitioner on this point and I hold that the Respondent No. 1 is not liable to show in his return of election expenses the charges of loudspeaker for all the 31 election meetings except the three meetings convened by him.

765. *Regarding the expenses for printing.*

Relevant voucher is Voucher No. 8 at Ex. 270 page (10), dated 14th February 1962.

766. It has been contended on behalf of the Petitioner that Ex. 495 is the carbon copy of the bill from Belgaum Fine Arts Offset Litho Works, dated 10th February 1962 for Rs. 122-40 nP. and in the evidence of the Respondent No. 1, the order relating to voucher No. 8 was made on 14th February 1962 and hence, if Ex. 495 is dated 10thr February 1962, that order should have been placed prior to 10th February 1962. He has also contended that the voucher No. 8, dated 14th February 1962 is for Rs. 235 given by one Medi for having taken that amount and Ex. 495, dated 10th February 1962 is for Rs. 122-40 nP He has further urged that the Respondent No. 1 admits in his evidence that the order made to Sri Medi was placed on 14th February 1962 and therefore there were two items of amount for Rs. 122-40 nP and for Rs. 235 regarding the wall posters. He has contended that the Respondent No. 1 has only shown the receipt for only one of the two items for Rs. 235 and suppressed the other item of Rs. 122-40 nP. He contended further that to show that he had not paid the sum of Rs. 122-40 nP., it was the duty of the Respondent No. 1 to have examined Sri Medi as his witness, as the burden has shifted to the Respondent No. 1 and that Respondent No. 1 has not examined Medi as his witness and therefore this amount of Rs. 122-40 nP., has to be added to the return of election expenses of the Respondent No. 1.

767. In Ex. 111, the list of Petitioner's witnesses, there is no Litho man cited by the Petitioner. The bill book produced with Ex. 143 has been marked as Ex. 495 and P.W. 74 Vinodachar has been examined by the Petitioner on this point. P W. 74, a partner of Belgaum Fine Arts Offset Litho Works, has given evidence that all the orders of his were received through Medi and so. he has written care of Medi pertaining to those transactions in the books and that he does not know the various persons like K. P. Gadag, A. G. Doddamani, Patil, Togammanavar, T. K. Kambli, mentioned in various pages of the bill books produced with Ex. 143 in which he (P. W. 74) has written care of Medi. He has also given evidence that in all these cases, money was also paid by Medi and that he (P.W. 74) has no contact with the persons mentioned in those bills and that Medi told him to make the bill in the names of those persons and so, he made them accordingly. He has also given evidence that because he had printed the posters of all those persons, the khatas were maintained.

768. In the return of election expenses of the Respondent No. 1, Ex. 270, a sum of Rs. 235 has been shown as incurred on 14-2-1962 as per voucher No. 8 dated 14-2-1962 Ex. 270 page (10) and the date of payment shown in Ex. 270 page (1) is 14-2-1962. The bill dated 10-2-1962 for Rs. 122-40 nP. had not been given to the Respondent No. 1 and the Respondent No. 1 has nothing to do with that bill of Rs. 122-40 nP. because

might have been sent by the commission agent Sri Medi to P. . 74 (refer evidence of Respondent para 29 page 24 and also the evidence of P.W. 74). The bill relating to the sum of Rs. 122-40 nP. was a matter between Medi and the Belgaum Litho Works (P.W. 74) and the Respondent No. 1 has nothing to do with it. The Respondent No. 1 has paid a total amount of Rs. 235 for which he had got the receipt as per voucher No. 8 given by Medi and admittedly, as admitted by P W. 74, the Respondent No. 1 has no direct dealing with P.W. 74. In the light of these circumstances on record, the evidence of the Respondent No. 1 with respect to these matters in para 85 of his evidence appears to be a mistake that the Respondent No. 1 placed the order on 14-2-1962. That mistake appears to be because of the lapse of time and because of the old age of the Respondent No. 1. Perhaps, what the Respondent No. 1 meant was that he had paid the money on 14-2-1962, as could be seen from Ex. 270, the return of election expenses.

769. I do not think that the burden of the Petitioner has shifted to the Respondent No. 1 I am unable to accept the contention made on behalf of the Petitioner on this point. Therefore, I hold that there is no suppression of Rs. 122-40 nP. by the Respondent No. 1 in his return of election expenses.

Chandrasekhar Printing Press.

770. There are two exhibits in connection with the above press, namely, Ex. 261, an extract of the account of the printing done for the Respondent No. 1 during the election period from 14-2-1962 to 21-2-1962, and Ex. 262, a sample copy of a badge with the symbol of the congress. According to voucher No. 9 (Ex. 270 page 11) dated 14-2-1962, the amount of printing charges is Rs. 155, voucher No. 10. of the same press is dated 18-2-1962 for Rs. 25, voucher No. 11 of that press is dated 19-2-1962 for Rs. 50 and voucher No. 12 of that press is dated 19-2-1962 for Rs. 25 and the total of all these vouchers is Rs. 255.

771. It has been contended on behalf of the Petitioner that according to Ex. 261, the total printing charge is Rs. 265 and the amount received from the Respondent No. 1 is also Rs. 265, but the Respondent No. 1 has shown in his account only Rs. 255 and therefore, he has suppressed a sum of Rs. 10 in his return of election expenses and in his accounts.

772. According to Ex. 261, the total printing charges comes to Rs. 265. There is an entry of Rs. 10 less in Ex. 261. There are five entries in Ex. 261 of which the first four entries tally with the accounts of the Respondent No. 1 in Ex. 293 and the last entry for Rs. 10 in Ex. 261 is dated 21-2-1962 for two thousand copies and there is also an endorsement for having received a sum of Rs. 10 on 21-2-1962. This amount of Rs. 10 was paid by a volunteer voluntarily and it has not been demanded or claimed either by the Respondent No. 1 or by the Congress and therefore, I hold that it